THE TRAVANCORE VILLAGE PANCHAYAT REGULATION (AMENDMENT) BILL.

Under Rule 42 of the Travancore Legislative Rules, passed under date the 18th October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting held on the 22nd November, 1935, agreed, without any amendments, to the Travancore Village Panchayat Regulation (Amendment) Bill, which was passed by the Sri Mulam Assembly at its meeting held on the 13th November, 1935.

---

THE TRAVANCORE REGISTRATION REGULATION (AMENDMENT) BILL.

Under Rule 42 of the Travancore Legislative Rules, passed under date the 28th October, 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting held on the 22nd November, 1935 agreed, without any amendments, to the Travancore Registration Regulation (Amendment) Bill, which was passed by the Sri Mulam Assembly at its meetieg held on the 18th November 1935.

---

## Legislative Business.

### THE TRAVANCORE AGRICULTURISTS' RELIEF BILL.—(*contd.*)

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, last evening I was trying to explain to the House that the conciliation of debts between the debtor and creditor through the machinery of a Conciliation Board was one of the chief devices for bringing relief to the indebted agriculturists. And, I told the House that the conciliation proposed in the Bill is purely voluntary, that is to say, that the conciliation proposed need not be accepted by the debtor or the creditor if he does not choose to do so.

At the same time, I was trying to meet a possible criticism that no proposals are made in the Bill for curtailing any past interest *i. e.*, interest accrued prior to this enactment and no proposal is made for reducing the principal of any debt, or, in other words, that there is no attempt to scale down any debt under any circumstances. As I said yesterday, it may not be right to *compel* the creditor to forego any amount. In well-ordered societies, which rest ultimately on law, the expectations guaranteed by law or the rules of the society should not be lightly set at nought. Nor can any general rule or law be devised as to the method of scaling down debts without causing hardship which is not desired by anybody. I was also trying to explain that the conciliation through a Board as proposed will avoid both evils. Firstly the conciliation need not be accepted by anybody, unless he is willing to do so. Secondly, no hard and fast rules are necessary for the scaling down of debts through a Board. The Board will be guided by the particular circumstances of each case in deciding what should be the scaling down or in what manner the scaling down of principal or interest, as the case may be, should be made.

MR. S. J. NAIR (*Nedumangad*): Then, what is the exact purpose of the Board?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I will come to that. I was saying that conciliation through the Board will avoid both of the two evils. In the first place, conciliation will be only with consent and there will be no hard and fast rules for the conciliation. Granting for a moment that scaling down will be one of the parts of conciliation, whenever necessary, what is the use of conciliation if it is only voluntary? It may be that the proposal for conciliation made by the Board is perfectly equitable as between the parties. But what is the purpose of it, if we cannot compel any party to accept it that is to say, when there is no voluntary acceptance of it? It is that point that I want to explain. Conciliation, as said already, is to be effected through a Board set up for the purpose. It has to be noted that all the circumstances of the case, all the assets and liabilities of the debtor, all the available means of the debtor, all these will be enquired into; and similarly as regards the creditor. Their respective economic conditions will also be ascertained. This will be done by perons having knowledge of men and matters. The creditor will be able to know what is the extreme that he can get from his debtor by taking the extreme steps allowed by the law. He will know what the facts are and what is the utmost amount he could secure out of the debtor, say, even driving the debtor to insolvency or to prison. Very often the creditor will find that he could not get his full amount When he is honestly convinced of all this, he will not take extreme steps at all; and by the proceedings before the Board, he can judge what he can reasonably expect to get out of his debtor. For an ordinary conciliation without any intermediary, the debtor and the creditor must meet face to face. It is this that distinguishes the conciliation which is proposed by this Bill, which will be through a Board. In the case of a negotiation for conciliation between the debtor and the creditor, each will be dealing with some suspicion of the other. The creditor may think that the debtor is not disclosing his assets. The debtor may think that the creditor is not amenable to his honest version of the facts and is attempting to exploit him.

MR. S. J. NAIR (*Nedumangad*): Is it not possible to get at a good neighbour for conciliation?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is exactly that good neighbour that I am trying to set up by this Bill. I am quite glad that Mr. S. J. Nair has caught my point (*Laughter*). We want a good friend. That good friend has to enquire into the respective positions of the debtor as well as the creditor, and get all the cards placed on the table.

MR. S. J. NAIR (*Nedmangad*): Will the debtor or the creditor be compelled to pay the cost of expenses incurred for finding the real position of the parties to the contract? In other words, will they have to pay any remuneration to that good friend for having secured the position of the parties?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. S. J. NAIR (*Nedumangad*): Is there not a provision to remunerate the good friend?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No.

MR. S. J. NAIR (*Nedumangad*): May I draw the attention of the member to sub-clause (*c*) where it is stated that the prescribed allowance should be paid to Board members either by the debtor or the creditor?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That is for making rules to pay T. A. or some such allowance. It is no remuneration.

As I said, there is to be an intermediary of a Board for the conciliation. It is given all the powers of a Judicial Officer for eliciting information as to the assets and liabilities of the debtor. It can also find out the genuineness of the documents and claims. With these powers, this good neighbour, as Mr. Nair would call it, will be able to bring all the facts of the case and be able to get all the cards placed on the table. Both the debtor and the creditor would see the real situation. There will be no fact which the debtor could hide and no fact which the creditor could not get at. In these circumstances, when the cards are all placed on the table, the creditor would know the extreme he can reasonably get of the debtor by taking the extreme steps allowed by law. The creditor may then agree to accept that sum in full settlement, though it may not be the full amount of the debt, rather than go to the court and take steps against him for the full amount. It is this that I want the House to realise. Although there is no *compulsory* scaling down of the debt, the conciliation proposed will really involve a scaling down, a scaling down which would be acceptable to the creditor. This scaling down is in the result done with the consent of the creditor and it is not based on any hard and fast rule laid down by the law, but is guided by the circumstances of each case. Further, Government are prepared to hold out some persuasion in this matter, which may induce the creditor to accept a scaling down in the result.

MR. P. C. KURIAN (*Kottayam I*): What is the point of the Law Member, I want to know?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is that a scaling down of the debt will take place in all deserving cases to the extent necessary and with the consent of the creditor, and that it is this that the conciliation will result in and it is this conciliation that the Boards are expected to achieve.

There is also provision for some persuasion being offered, which, the Government hope, will induce the creditor to accept the conciliation. And that persuasion consists in the offer of some cash forthwith in full settlement of the debts through the State Land Mortgage Bank, or some such recognised institution. The idea is that the Bank should work hand in hand with the Board, and it must be possible for the Board to tell the creditor at the conciliation proceedings that the Land

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Kayalam Paramesvaran Pillai.]

Mortgage Bank will offer such and such cash on the security of the property of the debtor and that this cash will be available to the creditors forthwith, if they agree to the conciliation proposed. This is indicated in Clause 15 (*a*) which states that one method of conciliation is—

> "that the debtor pay the creditor or creditors forthwith, or within a time to be fixed by the Board, a lump sum in cash in full settlement of all the debts, the amount of such lump sum being fixed by the Board having regard to the facts enumerated in Section 13 and to the amount which the debtor may raise by mortgaging his entire properties to the State Land Mortgage Bank or to some such recognised institution".

The idea is that, in conciliation proceedings, the Land Mortgage Bank should be linked up with the Board, and the Board should be able to tell the creditor, "Here is such and such cash; accept it in full settlement". Say, if the assets of the debtor are found to be Rs. 10,000, the creditor can be given Rs. 4,000 cash by the Bank in full settlement of a debt of say, Rs. 7,000. It is conceived that this will be a very strong incentive to the creditor to accept this method of conciliation.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Can the Bank be expected to advance so much money on the property security of the debtor?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If the security is ample, the Bank can, I believe; and the Bank may raise money by issuing debentures or issue debentures to the creditors themselves.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Is it the position that the Land Mortgage Bank should keep money to advance, as and when the Board directs, in all cases?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The Board should function in consultation with the Bank.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Does the member think that the Bank will be ready to meet all the demands contemplated in the Bill?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If there is ample security, the Bank will not find it difficult to supply money; or as I said before, debentures may be issued.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Is the Bank bound to advance money?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): There is no legal obligation on the Bank to advance any amount.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Suppose the Bank is not able to meet the demand?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is hoped by Government that such a contingency may not arise.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): How?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): By providing the Bank with sufficient funds; and allowing debentures to be issued.

So then, the Board will decide, considering the assets and liabilities of the debtor, what is the maximum amount that can be given to the creditor in cash in the event of the latter accepting the decision of the Board.

MR. P. C. KURIAN (*Kottayam I*): May I know whether the Land Mortgage Bank will advance any amount?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Not *any* amount.

MR. K P. KRISHNA MENON (*Parur*): May I know whether the Board is the proper authority to value the properties?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Have the Government considered the question of financing the Bank when they guarantee that the Land Mortgage Bank will always be ready to advance money?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, to some extent it has been considered. But they have not come to any final conclusions. That will be necessary only if the provisions of this Bill are accepted by this House.

MR. K. PADMANABHAN (*Chirayinkil I*): May I know whether the man to be appointed is a judicial officer or not?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Not necessarily. He must know human affairs and must be one who will be able to handle people.

MR. K. PADMANABHAN (*Chirayinkil I*): May I know the difference between their functions and those of the Law Courts?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): For the decision to be arrived at by the Law Courts, well-defined rules are laid down either in statutes or in common law. The Boards decide not by any definitely laid down rules. They apply their own sense of equity and fairness having regard to the peculiar circumstances of each case and come to a conclusion as to what shall be the conciliation applicable to each case.

MR. K. PADMANABHAN (*Chirayinkil I*): If the person is devoid of any legal knowledge, may I know whether he will function properly?



LIBRARY ARCHIVES Kerala Legislative Assembly

MR KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That will depend upon the man. He must be an impartial, independent man, a man able to deal with human affairs.

MR. K. PADMANABHAN (*Chirayinkil I*): May I know the dangers in entrusting the task to the courts of the land?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): My own view is that it may prove harmful.

MR. K. PADMANABHAN (*Chirayinkil I*): May I know the nature of the harm?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is inherent in the functions of each, which are widely different.

MR. K. PADMANABHAN (*Chirayinkil I*): May I know the harm if conciliation work is entrusted to the courts of the land?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) The court is not a Conciliation Board. The court is a court to decide according to strict law.

MR. K. PADMANABHAN (*Chirayinkil I*): Why not the conciliation work be asked to be attended to by the courts?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It would be just like asking Mr. Truscott to perform a surgical operation for, say, appendicitis. If he has got surgical experience, he may do it, but he does it as a surgeon and not as an engineer.

MR. K. PADMANABHAN (*Chirayinkil I*): May I know whether the Board has to take evidence?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No evidence is taken as for the purpose for which evidence is taken in courts.

PRESIDENT: We are now discussing the general principles of the Bill. We are not entering into those minute little details in regard to the qualifications of persons who should constitute the Board.

MR. K. C. ABRAHAM (*Kottayam II*): If the Land Mortgage Bank would be amply provided with funds to meet the demands of debtors, and leaving human nature as it is to expect a cash payment if offered, would not that be a sufficient solution for all these evils?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That may be so But then the peculiar circumstances should be noted. A creditor may not be willing to accept say Rs. 5,000 from a man who owes him say Rs. 10,000, unless he is satisfied that the debtor's *entire* properties can secure an advance of only Rs. 5,000 from the Bank. And who is going to find out what the entire properties are and that to the satisfaction of the creditor? It is the Conciliation Board that will do it, at any rate is expected to do it.

MR. T. P. VELAYUDHAN PILLAI (*Tiruvalla III*): According to the Law Member, will the Board have to consider the question of the validity and binding nature of a debt?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Addtional Head Sirkar Vakil*) : Yes, to the extent necessary for conciliation.

RAO SAHIB S. PARAMESVARA AIYAR (*Nominated*): Is there not a provision for the appearance of Vakils before the Board ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Yes.

The member might remember that recently, in the Madras Legislative Council, there was considerable difference of opinion on that point. Probably, in this House also, there may be a lot of difference on that point.

MR. M. SIVATANU PILLAI (*Tovala*): May I know whether I am correct to say that, in the matter of bringing into effect a conciliation, the difficulty is because the creditors do not know the real state of affairs of the debtors or because they want to realise as much as possible from the debtors ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) ; The creditor will try to get the maximum that he can.

MR. K. PADMANABHAN (*Chirayinkil I*) : Supposing there is a difference of opinion as to the amount of debt, should not the Board arrive at a decision on that ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Yes, to the extent necessary for conciliation.

MR. K. PADMANABHAN (*Chirayinkil I*): Is not judicial experience necessary for that ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Yes, it may be necessary. But the real function of the Board is conciliation and not a judicial adjudication.

Sir, I was trying to explain that a creditor may agree to a conciliation, firstly, because he is told all the facts and the maximum that he can reasonably expect to get out of the debtor, and, secondly because he can hope to get a cash payment, though a reduced amount, in full settlement of the debts. It is conceived that this will be a very strong incentive to the creditor to accept the conciliation. If he does not accept the conciliation and accept the cash that is offered, he will be forced to go to the Court for realising his money out of the property and what is it that he is going to get out of the property ? And when is he going to get it ? These things will necessarily weigh with the creditor. He will hold all the difficulties and worries and uncertainties of a law suit in one scale of the balance ; and, in the other scale, he will hold the cash payment which the Land Mortgage Bank offers. And, then he will decide. Generally speaking, wherever the debtor is in embarrassed circumstances, the creditor will prefer the cash payment advanced by the Bank, though it may not be the full amount that is legally due. Wherever he is not in embarrassed circumstances, the creditor may insist, and may think it wise to insist, upon his pound of flesh ; but in such cases, there will not be anything quite inequitable in allowing the creditor to

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Kayalam Paramesvaran Pillai.]

pursue his debtor to the bitter end. But where the debtor is really in embarrassed circumstances, the likelihood is that the inducement of a cash payment will be a very strong incentive to the creditor to conciliate and scale down the debt.

Again, there are other methods of conciliation which will settle the debt *immediately* or will offer an *expeditious* settlement of debts. See Clause 15 (*b*) & (*c*). Clause 15 (*b*) is :—

> "that a portion say, one-fourth of the assets of the debtor be left to the debtor free from all liability for his debts, and the balance left to the creditor or creditors to be appropriated by them or to be sold and the sale proceeds distributed amongst them, it being also laid down how the property, or the sale proceeds, as the case may be, shall be distributed amongst the creditors, if there are more creditors than one."

I need not read the whole of it.

Thus, with the persuasion and inducement in the shape of cash payment, prospect of immediate settlement and prospect of expeditious settlement, and with the little modicum of compulsion already referred to, it is hoped that conciliation will be effctive through the proposed Boards; and be it hoped that such conciliation will include where necessary the reduction of interest and even principal, in fact, a scaling down of debts.

**MR. K. C. ABRAHAM** (*Kottayam II*) : In respect of Clause 15 (*b*), does not the distribution, after leaving one-fourth, presume real insolvency if it is worked out?

**MR. KAYALAM PARAMESVARAN PILLAI** (*Additional Head Sirkar Vakil*) : I do not mind by what name it is called. It does not however involve any insolvency necessarily.

**MR. K. C. ABRAHAM** (*Kottayam II*) : What is the idea of dividing three-fourths of the properties and by whom should it be divided?

**MR. KAYALAM PARAMESVARAN PILLAI** (*Additional Head Sirkar Vakil*) : To be divided among the creditors.

**MR. K. C. ABRAHAM** (*Kottayam II*) : Is it to be divided by the Board?

**MR. KAYALAM PARAMESVARAN PILLAI** (*Additional Head Sirkar Vakil*) : Yes by the Board. But, of course, that will come into effect only if the parties agree. Suppose a debtor's properties consist of 6 acres of land. 4½ acres will go to the creditors and 1½ acres retained by the debtor. That is the idea.

**MR. P. K. NARAYANA PILLAI** (*Ambalapuzha I*) : But in the case of 1,000 acres, will not the debtor be able to retain 250 acres?

**MR. KAYALAM PARAMESVARAN PILLAI** (*Additional Head Sirkar Vakil*) : Not necessarily. One-fourth is put in, only by way of illustration. The idea is that *something* should be left to the debtor having regard to the status and condition of the debtor.

**MR. K. C. ABRAHAM** (*Kottayam II*) : May I know whether it would not be most inequitable on the part of insolvent debtors to be left with ¼ or 1/5 as the case may be.

LIBRARY ARCHIVES Kerala Legislative Assembly

**MR. KAYALAM PARAMESVARAN PILLAI** (*Additional Head Sirkar Vakil*) Not necessarily. If you pursue him, for example, in insolvency, there will be loss to the creditor. There is the Receiver and there is delay. All these cause loss.

**MR. P. K. NARAYANA PILLAI** (*Ambalapuzha I*): May I know whether the Insolvency Regulation would be suspended by this Regulation ?

**MR. KAYALAM PARAMESVARAN PILLAI** (*Additional Head Sirkar Vakil*): No, it will not be. This conciliation operates only if the parties agree. If the parties agree, the agreement will be reduced to writing and given the force of a decree.

Having regard to certain questions asked, I may say that even though there may not be Conciliation Boards, the Land Mortgage Bank may operate to the relief of indebtedness. I would draw the attention of the House to the terms of Press Communique issued by Government before this Bill was published. The Communique says that—

> "Government are further pleased to direct the Land Mortgage Bank to advance money whenever a debtor and all his creditors have agreed to bring down the total debt to the amount that may, according to the rules of the Bank, be advanced upon the security of the immovable property that is offered by the debtor. Preference will generally be given by the Land Mortgage Bank to applications for loans consequent on such conciliation."

So then the idea of the Land Mortgage Bank playing its part has already been implemented by Government; and it is in the light of that that this Bill should be read. The Board will act as an intermediary and settle the transactions between the parties expeditiously and cheaply.

**MR. K C. ABRAHAM** (*Kottayam II*): Would it not be utterly against the public interest to have the opportunity to lay bare the whole aspect of a respectable man's position by the mere freakish whim of a paltry creditor? Will it not place the most respectful person's affair in a most discreditable form ?

**MR. KAYALAM PARAMESVARAN PILLAI** (*Additional Head Sirkar Vakil*): In that case I presume that that gentleman does not want conciliation. If he wants his debts to be settled, he must be able to tell the Board what he is prepared to accept and convince the Board that his offer is reasonable and equitable.

Upon receipt of the statement of debts, the Board may give notice to the gentleman, and if he does not want conciliation under these conditions he may say so and practically withdraw.

**MR. P. K. NARAYANA PILLAI** (*Ambalapuzha I*) Cannot the Board issue the certificate even in the case of disagreement between the parties ?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It can. If the certificate is issued, this gentleman can go and file a suit. All that he loses by reason of the certificate is interest from the dade of the certificate and the costs. This is not much, though there is some sort of compulsion to accept conciliation.

MR. K. R. ELENKATH (*Kalkulam I*): In the case of a person who expresses unwillingness to abide by the decision of a Board, may I know whether he will be entitled for the interest during the intervening period, that is, between the date on which he appears before the Board and the date of filing the suit?

MR. KAYALAM PARAMESVARAN PILLAI(*Additional Head Sirkar Vakil*): According to the proposal in the Bill, he will forfeit interest from the date of the certificate, if any, issued by the Board.

MR. K. R. ELENKATH (*Kalkulam I*): May I know whether, in a case where he refuses to accept the decision of the Board, the person is entitled to interest?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): In order that he may forfeit interest, the Board must go further and record a certificate that the conciliation proposed is a fair one; and if that certificate is issued, the Court may disallow costs and future interest.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): In case of failure of conciliation, is there any method conceived in the Bill to give effect to the views of the Board?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I told the House already that the decision of the Board in regard to conciliation will not be binding on anybody, unless it is accepted by both the parties.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): My question is, if the parties do not agree to the views of the Board, whether there is any method suggested or provided in the Bill to give effect to the views already expressed by the Board?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The views of the Board with regard to conciliation will not be binding on any party, and will become effective only if the parties agree. If the parties do not accept the decision of the Board, the views of the Board may be recorded in a certificate; and even those views will not become effective, but may be taken into consideration by the Court in deciding the question of future interest and costs.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): So am I to take it that there is no legal sanction behind the views of the Board?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I have stated the real position. There is some compulsion proposed, as already explained. If that is a legal sanction, there is a legal sanction. If my friend is not prepared to take that as a legal sanction, then there is no legal sanction.

The proposal for the establishment of Conciliation Boards forms a considerable portion of the Bill and it is believed that they may prove to be of real source of benefit to the indebted agriculturists.

RAO SAHIB S. PARAMESVARA AIYAR (*Nominated*) : Is there any provision in regard to costs incurred by the parties in the proceedings before the Board ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : No proposal is made in regard to costs.

RAO SAHIB S. PARAMESWARA AIYAR (*Nominated*): Will not the parties have to incur expenses in the summoning of witnesses and payment to Vakils ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : All these points will be considered by the Board in determining the amount to be paid to the creditor and the creditor will consider it too before he decides to accept the amount offered.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*) : Therefore, the appearance of legal practitioners before the Board will be gratuitous ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Not necessairly. Only no costs as such will be awarded by the Board.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : Will anybody appear before the Board when he is conscious that he is not going to get anything ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : No, if he is really conscious.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : Should not the parties get justice ? Will any person in Travancore be prepared to invest money in getting justice with such doubtful justice ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : There is the hope and likelihood of the parties agreeing. If they agree, many things will happen. Let us hope that they will agree and I have tried to explain what are the reasons that would induce them to come to an agreement. There is the persuasion and inducement in the shape of cash payment, immediate settlement and expeditious settlement. These things, it is conceived, will induce the creditor to accept the Board's decision, if fair and equitable to all parties.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*) : Suppose the creditor, out of malicious intention, induces a debtor to put himself to all sorts of expenditure and at last backs out of the agreement. Under such circumstances, does not this provision work seriously against such a debtor ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Probably we may conceive of many possibilities which may cause hardship, but we cannot avoid it. If a rich plaintiff maliciously brings a suit against a person and takes it through three courts, is it not a hardship ?

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*) ; But the person will get the cost there.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : He will get the costs as assessed by the court; but will that be adequate compensation in fact ? We cannot expect, ordinarily speaking, that human beings are so malicious. If they become so malicious, the society itself may become impossible. The society itself rests on rules of law, rules of morality and rules of equity. We presume that these will operate ordinarily and in the majority of cases. If there is malicious mischief throughout, what can we do ?

MR. S. J. NAIR (*Nedumangad*) : May I know whether all the provisions under part 2 are solely intended to benefit the creditors ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : No. Debtors also.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) : Section 22 says :—

> "if, in compliance with a notice under Section 8, a creditor does not duly furnish the statement of the debts owed to him, his debts shall be deemed for all purposes and all occasions to have been duly discharged."

If the parties are not bound by the decision of the Board, then why is there this provision ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : The Boards have to perform the duty of conciliating the debtor and the creditor ;and for that purpose, they want facts to be placed before them. So this provision is laid down, to prevent non-cooperation by any creditor. It is intended only for obtaining information so that the Board may come to an equitable conclusion.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : I see that the Bill provides some kind of sanction with respect to those who have to seek the aid of a Court for obtaining decrees. But in the case of those who have already obtained decrees and who therefore do not stand in need of resorting again to a Court for obtaining decrees, may I know what is the sort of sanction proposed ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : There is the provision disallowing future interest.

MR. V. RAMAKRISHNA PANICKAR (*Karthikapalli II*) : Is it the idea that conciliation will be resorted to without incurring any expenditure?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That will all depend on the parties concerned. In the case of Mr. Ramakrishna Panickar, for instance, all that he need do is to go to the Office of the Board in his motor car; and he need not incur any special expenditure.

MR. MENATHERI N. KESAVA PANICKAR (*Nominated*): What will happen if the debtor denies the debt?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The Board will go into that question also to the extent necessary.

MR. MENATHERI N. KESAVA PANICKAR (*Nominated*): Ultimately will the parties have to go to a Court of Law?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The proposal of the Conciliation Board will bind the parties only if they agree; otherwise, they may have to go to the Court.

MR. K. PADMANABHAN (*Chirayinkil I*): Have the Government any idea of the number of Boards that may have to be established?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No, none definite. Perhaps a Board may be established for each taluk, but perhaps we may have to go by slow degrees and feel our way by establishing Boards in selected centres.

The next part of the Bill provides for the payment of debts in instalments. Clause 33 provides for that. Power is proposed to be given to Execution Courts to order recovery of decree debts in instalments and to fix the number and period of such instalments. The considerations which should weigh with the Court in passing such orders are indicated in Clause 33, such as the amount of the money due, the adequacy of the security offered, and so on.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): In Clause 16 it is provided that conciliation agreements can be treated as decrees. May I know whether, under Clause 33 also, the definition of 'decree' is to include conciliation agreement also?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I did not intend it; but, if, by reason of the language employed, there is room for any doubt, appropriate changes may be made.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): Has not Court fee to be paid before a conciliation agreement is sought to be executed?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No. You have only to pay one half of a rupee which is the Court fee for execution applications. Perhaps we may have to devise the levy of some more court fee.

Sir, I may point out that the principle of compelling a creditor to take repayment of debt in instalments is accepted even now in the present Civil Procedure Code.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): In matters involving Rs. 2,000 and above, is it not provided that the Boards' certificates should be sent up to the District Courts?



LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): A Court has been provided for merely because these certificates have to be kept safe in some office or other. If the House so decides, they may be kept in the Taluk Cutcherry or in the Sub-Registrar's office or in some such office.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): May I ask why the concession of paying the debt in instalments, which is available in regard to conciliation agreement, has not been extended to these certificates?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The certificates are only mere records of the opinion of the Board in cases where the parties do not agree. The question of instalment payments does not therefore arise with respect to these certificates.

MR. MENATHERI N. KESAVA PANICKAR (*Nominated*): Does any appeal or revision lie on the finding of the Board when the debt is denied by the debtor?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No. But, of course, the civil suit is available if the finding is not accepted.

I was submitting, Sir, that the principle of compelling a creditor to accept repayment of debts in instalments is recognised by the law even at present. I mention this because there has been some criticism that creditors are now sought to be compelled to accept debts due to them in instalments and that such compulsion is an infringement of their legal rights. Rule 11 of Order 20 of the Civil Procedure Code says—

"(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) After the passing of any such decree, the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit."

Even now, therefore, after the passing of the decree, it is open to the Court to allow repayment of the debt in instalments, though only with the consent of the decree-holder. What the present Bill proposes is that, for a period of three years, the execution Court may convert money decrees into decrees for instalment-payment even without the consent of the creditor. The various considerations that should weigh with the Court in passing such orders are laid down in Clause 54 of the Bill.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): What is the period within which these instalments have to be paid?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No definite provision has been made for that in the Bill. It is a matter of detail which the House may consider and provide for.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Are they to be monthly, or quarterly, or annual, or biennial instalments?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): They may be weekly, fortnightly, monthly, quarterly, half-yearly or annual instalments. It will all depend.

The next part of the Bill deals with interest on debts. It provides that, for the coming three years, the interest shall not exceed 6 per cent. in respect of debts outstanding on the date of the enactment when it is passed. In regard to debts incurred after the passing of the enactment, interest will not be allowed to exceed 9 per cent. in the case of unsecured debts, and 6 per cent. in the case of secured debts or decree debts. Interest on paddy loans is also proposed to be limited to 9 per cent. on debts incurred before this law comes into force. In regard to future paddy loans, the loan will be treated as a money loan, the amount of the loan being calculated according to the price of the paddy prevailing at that time.

RAO SAHIB S. PARAMESVARA AIYAR (*Nominated*): Why is it that a higher rate of interest is allowed on unsecured debts alone?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): They are not as easily and as surely recoverable as secured debts.

MR. N. E. VARUGHESE (*Tiruvalla I*): What was the basis or principle on which the period of three years has been fixed?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is expected that the position may have to be reviewed, and necessary changes made, then.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Do not these provisions interfere with vested rights and legitimate expectations?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): In any event, these provisions do not interfere with vested rights in any substantial manner.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): These provisions seek to reduce the rate of interest even on decrees already passed.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, but only future interest and, it is open to the creditor to take immediate steps to recover the money.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Only in instalments?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): To that extent, certainly, vested rights have been interfered with; but, as I said, it is not considered that this is a substantial interference. As I have explained already, even now, it is open to the Court to order instalment repayments of a debt. The Bill only seeks to extend that discretion of the Court just a bit, namely, that even after the passing of the decree, the Court may do so. As it is the Court can do it only at the time of passing the decree, but not afterwards.

MR. MENATHERI N. KESAVA PANICKAR (*Nominated*): Clause 22 of the Bill says.—

> "If, in compliance with a notice under Section 8, a creditor does not duly furnish the statement of the debts owed to him, his debts shall be deemed for all purposes and all occasions to have been duly discharged :"

Does that affect vested rights?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That provision relates to conciliation, which I have finished already. I shall if necessary explain it. But now, I am anxious to finish my speech before we rise for lunch.

MR. A. THANU PILLAI (*Trivandrum-Rural*): Why is it that the rate of interest has been made particularly low for the agriculturists alone?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The idea is that, for some time to come, the agriculturists cannot afford to pay any higher interest.

MR. A. THANU PILLAI (*Trivandrum-Rural*): But the agriculturist himself is going to find it more difficult to get loans.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, that is a point and the House has to consider that aspect also. But my present idea is that, for the coming three years, the agriculturist need not go in for any loan at all unless he is able to get it at a rate of interest which he can afford to pay.

MR. A. THANU PILLAI (*Trivandrum—Rural*): But the agriculturist also must live; he cannot do it except by borrowing.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): As I said, the House may consider that aspect also and, if necessary, make appropriate changes.

In regard to the execution of decrees, two permanent amendments are sought to be made in the Civil Procedure Code. One is to allow usufructary mortgages to be foreclosed. The other is with regard to the arrest of the agriculturist debtor. It is provided that he shall not be arrested except under certain specified circumstances. In regard to decrees already existing, he should submit a complete list of his assets in order to escape from arrest, so that the creditor may not question the *bona fides* of the debtor, and may, if he thinks fit, attach and hold under attachment all the assets of the debtor.

I hope that the House will accept the general principle of the Bill. If that is done, it will go to a Select Committee where it may be examined in detail. It is hoped that this proposed law will go to some extent at least to ameliorate the condition of the agriculturists of this country.

PRESIDENT: Before allowing the discussion to proceed further, I may, perhaps, before adjourning for lunch, intervene just for a minute. The House may be aware that, since the Report of the Debt Redemption Committee was placed in the hands of Government, unanimous and consistent demands were made from all parts of the State that the Government must take speedy action on the Report, come to a conclusion speedily and expedite legislation, if legislation became necessary. In pursuance of that great demand, the Government framed legislation and this Session has been summoned definitely for the purpose of making as much progress with this legislation as is possible under the rules. I say this definitely in the hope that, before the House rises this

LIBRARY ARCHIVES Kerala Legislative Assembly

afternoon, it will be possible for it to have finished the first reading of the measure and to have accepted the motion which, I think, the Law Member will be making for the appointment of a Select Committee. I am assured by the Law Member that he will take great care to see that the members of the Select Committee will certainly have freedom of action to make such amendments and alterations as they may find themselves justified to do. I am indeed glad that the Law Member was subjected to a stiff cross-examination for about an hour in the witness-box and I think that ought to have given the House a clearer idea of the provisions of the Bill than merely its reading would have done. I am therefore appealing to the House to expedite the work as much as possible in the afternoon, as, according to the prescribed calendar, we have only one day, namely, this day, left for official work. Tomorrow and Monday have been reserved for non-official business.

The House adjourned for lunch at 1·3 P. M. and reassembled at 2 P. M. with the Deputy President in the Chair.

MR S. J. NAIR (*Nedumangad*): Sir, I oppose the Bill and I feel sorry that I have to oppose the Bill as it has been presented to this House. I am not at all opposed to any legislation brought to this House for the purpose of relieving the distress of the agriculturists. But the present Bill, as it stands, does not serve the purpose. Instead of trying to safeguard the interests of the agriculturist debtors, it only safeguards those of the creditors. The Bill before us serves the purpose of a Creditors' Bill and not the Debtor's Bill. The provisions of the Bill are most disappointing and unsatisfactory. The Bill does not in any way help to alleviate the sufferings and difficulties of the agriculturists. As the result of the recent Circular sent out by the High Court to the subordinate Courts, the debtors derive greater privileges and get greater conveniences in order to discharge their debts than the present Bill provides for. In the Statement of Objects and Reasons of the Bill, it is stated by the Law Member that the proposals in the Bill are intended to give them "such relief in *some* directions." Well, he does not say that the Bill is intended to give them relief in *all* directions. This, I submit, is the most defective part of the Bill. The representatives of the people, as well as the people themselves, have been agitating in recent times that they want a Bill to see that in all respects the difficulties of the agriculturists are obviated. But here the Law Member comes forward and says that this Bill is intended to give relief in *some* directions. That is not at all sufficient.

DEPUTY PRESIDENT: What are the respects in which you want further relief to the agriculturists?

MR. S. J. NAIR (*Nedumangad*): I will come to that, Sir. It is widely stated that the Government has fallen into the hands of the bankers.

MR. K. R. ELENKATH (*Kalkulam I*): Is it not stated that the Government has been purchased by them?

MR. S. J. NAIR (*Nedumangad*): The Government has not been purchased by them.

LIBRARY ARCHIVES Kerala Legislative Assembly

**DEPUTY PRESIDENT :** I think the suggestion of Government having been purchased smacks of an insinuation. To my mind the Government being the Government of His Highness the Maha Raja cannot be purchased. (Messrs. S. J. Nair and E. V. Krishna Pillai : *Hear, hear.*)

**MR. S. J. NAIR** (*Nedumangad*) : That is why, Sir, I replied to my friend that the bankers have not purchased the Government.

In the second paragraph of the Statement of Objects and Reasons of the Bill, I find it stated that the "vested private rights are not sought to be interfered with in any substantial manner." But, Sir without interfering with vested private rights in a substantial manner, it is not possible to render any sort of help to the agriculturists. And I submit that the statement in the Statement of Objects and Reasons of the Bill, is by itself sufficient proof that the Bill is defective. While the Law Member was making the statement, Sir,—no doubt the honourable Law Member is an expert lawyer, the conduct of the village schoolmaster in the "Deserted Village" came to my mind. The Law Member himself to a very great extent was confident of the defects of the Bill.

**DEPUTY PRESIDENT :** You mean *conscious* of the defects.

**MR. S. J. NAIR** (*Nedumangad*) : Conscious and confident alike. It was out of his consciouness of the defects in the Bill he wanted to make out a strong case out of a very weak one. It was at that time the lines in Goldsmith's "Deserted Village" about the school-master that, "even though vanquished he could argue still", came to my mind, Sir. (*Laughter.*)

The title of the Bill is "the Travancore Agriculturists' Relief Bill" and not "the Travancore Agricultural Debt Redemption Bill." The title itself shows that the Bill is very narrow in its outlook.

**MR. A. S. DAMODARAN ASAN** (*Mavelikara*) : Or is it wider ?

**MR. S. J. NAIR** (*Nedumangad*) : No. There is a great difference between redeeming the agriculturist of his existing debts and at the same time rendering him relief by merely giving him some relief, so that the debtor may prolong his agony.

**MR. PACODE A. NARAYANA PILLAI** (*Vilavankod*) : Is not the title intended to describe the Bill correctly ?

**MR. S. J. NAIR** (*Nedumangad*) : The title, as it stands, correctly describes the Bill, but this is not the sort of Bill that we wanted to be brought to this House so that the agriculturists might be benefited. I find that the sub-title of the Bill is peculiar. The preamble is taken out of its place and inserted as a sub-title ; and the sub-title conveys no meaning at all. It is highly necessary that the agriculturists in the State must be saved at any cost ; and for that purpose, I am really sorry to submit that the Law Member has not made any provisions in the present Bill.

Coming to the definition of "debts," we find that debts incurred for purposes of trade, or due to Government, or any land revenue or anything recoverable as an arrear of land revenue or any debt due to a

LIBRARY ARCHIVES Kerala Legislative Assembly

co-operative society or any debt arising from any transaction of the nature of a lease including a *kanapattom* transaction falling within the purview of the Jenmi and Kudiyan Regulation of 1071, etc., are excluded from the perview of the Bill. Sir, it is clear to all that, if we exclude the above-mentioned debts, there is very little debt left to the ordinary agriculturists of the State in the shape of debts. So if at all Government intend rendering any help to the suffering agriculturists, it is highly necessary that the debts now excluded must be included and remedial provisions must be inserted in the Bill. Otherwise, no good will accrue as a result of the passing of the Bill.

**RAO SAHIB S. PARAMESVARA AIYAR** (*Nominated*): Should debts due to co-operative societies also be included?

**MR. S. J. NAIR** (*Nedumangad*): Yes.

Part II of the Bill deals with Debt Conciliation Boards. The powers of the Board are very much limited. The Board has practically no power. It is only a sort of friendly power that it possesses. It has only an advisory power, but it has no power to see that the advice given is acted upon. I do not see what purpose such a Board will serve in our State in relieving the sufferings of the agriculturists. Clauses 3 to 32 deal with Conciliation Boards. The Board, as it is proposed to be constituted, is incapable of rendering any help to the suffering agriculturists. The methods of conciliation are given in Clause 15. The Law Member said much about Clause 15. Sir, Clause 15 makes provision for safeguarding the interests of the creditors and not those of the debtors. There is absolutely no creditor in the land today who would be unwilling to accept a ready cash payment even if the amount is scaled down and relieve the agricultural debtor out of his clutches. So if the interest of the agriculturists is to be safeguarded, such a provision as Clause 15 (*a*) is not at all needed. Even without such a provision, everybody knows, as a matter of fact, that the debtor can escape from the clutches of the creditor, provided he is willing to pay ready cash covering a reasonable portion of the debt.

Sir, Clause 15 (*c*) says—

"That the debtor pay either the entire amount of the debts, or a reduced amount in full settlement, in instalment, etc."

Here it is only the interest of the creditor and not that of the debtor that is safeguarded. Even unsecured debts are sought to be made secure so that the creditors' interests may be safeguarded.

Again Clause 30 of the Bill dealing with extension of limitation helps to a great extent the creditors of the State and not the debtors, because if either the creditor or the debtor appears before the Conciliation Board, they could allow the application to be dragged on for any length of time and subsequently the creditor is at full liberty to back out of the Conciliation Board and act as he pleases. There are various instances today wherein creditors file suits, but due to pecuniary difficulties they fail to pay sufficient court fee for the suit in time and

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. S. J. Nair.]

consequently the suits are dismissed. But here in the Bill a provision is introduced in order to safeguard the interests of the creditor who has not got sufficient money with him to file suits in regard to debts which will otherwise become time-barred, so that he may collect the money conveniently and file suits leisurely before the court. Hence this provision in the Bill indirectly helps the creditor and not the debtor.

Part III of the Bill deals with temporary provisions regarding execution of decrees and interests. Clause 33 provides for the recovery of debts in instalments. Well, Sir, the provision is made here only for a period of three years and the number of instalments is fixed as not exceeding 12 in any case. It is a fact known to all that, even at present, in the civil courts, debtors get more time than is provided for in this Bill and they get greater number of instalments also. So by this provision also, the debtor is not in any way benefited.

Part IV of the Bill deals with paddy loans. This too would benefit the creditor and not the debtor, because Clause 37 provides that future paddy loans would be treated as money loans and not as paddy loans. Not only that. The price to be fixed for the paddy is to be calculated at the market price prevailing at the date of taking of the loan. That, I submit, only safeguards the interests of the creditor and not that of the debtor.

In Part V, an amendment is proposed to be made in the Civil Procedure Code. That amendment would only help the creditor and not the debtor. An amendment is made to Section 44 (*a*) wherein foreclosure of *otti* property is allowed. I submit that this would cause much hardship to the owners of the property in their *jenmom* right. Again in Section 48 (*a*) (2), they will be practically surrendering all the properties. I submit that sufficient security ought to be provided so that the debtor may get some time to repay the debt without courting life in the Central Jail.

In short the Bill is most disappointing. The following essential conditions must be incorporated in the Bill. The Conciliation Board should be given the power to scale down the debts. There should be an all-round uniform lowering of the interest to 4 per cent. All sorts of debts of the agriculturist should be included in the definition of debt. Sufficient time should be given to pay off the debts by reasonable and small instalments. The period for the repayment of debts should be fixed at 20 years at least. Under no condition and circumstance the property of the agriculturist should be sold in court auction. The debtors should permanently be exempted from the barbarous, antiquated and inhuman system of arrest and detention in civil jail.

Without making the necessary provisions covering the above conditions, no Bill will be sufficient and acceptable. For these reasons, it is evident that the Bill is not one that will help the agricultural debtors, but one that will help the agricultural creditors. That is the reason why I oppose it. But if the Law member would give the

LIBRARY ARCHIVES Kerala Legislative Assembly

necessary assurance that he is prepared to accept reasonable amendments that would be made by this side of the House, I would support the principle of the Bill and permit it being sent to the Select Committee.

**DEPUTY PRESIDENT:** In other words, you will then be prepared to review your position?

**MR. S. J. NAIR** (*Nedumangad*): Yes, Sir.

**MR. POTTAYIL S. KRISHNA PANICKAR** (*Shertala II*): Sir, I support the principle of the Bill, *viz.*, that, in view of the abnormal fall in price of the agricultural products and the consequent increase in the burden of the agricultural debt, special measures should be devised for giving them relief by reducing their debt. But I am sorry to note that the provisions contained in the Bill are inadequate to meet this end in view. The Bill as it is, is rather disappointing. The scope of the Bill has been considerably narrowed by excluding certain kinds of debts which ought to go into the Bill, I mean the co-operative debt. There is no justification to exclude this debt from a measure which is intended to benefit agriculturists and to relieve their indebtedness. The co-operative movement is essentially an agriculturists movement and as such to exclude this debt from the operation of the present Bill is rather very much limiting the scope of the Bill.

Another point I wish to emphasise is about a provision in the second part of the Bill, *viz.*, the provision that the Government reserve to themselves the right to limit or to prescribe the pecuniary jurisdiction of the Conciliation Boards. In regard to the efficiency of these Conciliation Boards, in spite of the lucid and persuasive arguments advanced by the Law Member, I have my own doubt as to how far these Boards will be conducive to the conciliation of debts. The sanction of agreement which in 99 cases out of 100 is not likely to be achieved, knowing as we do human nature and the mentality of the creditors, to my mind it appears that it would rather be a waste of energy and money unless we are prepared to put in some more compulsion into it. In the Legislative enactments obtaining in certain parts of British India, there are such provisions introducing a greater amount of compulsion. For instance, in a recent enactment passed in the Madras Legislative Council, it is provided that, if creditors with more than 50 per cent. of the debts agree to the conciliation proposed by the Board, it must be registered and that it must have the force of an agreement entered into by all parties concerned. Unless we also make a similar provision even in cases where the Conciliation Board is trying to effect a settlement and the majority of the creditors agree to the agreement proposed, a cantankerous creditor, however small his amount might be, could make the task fruitless and in such cases the energy and the time spent will only be a waste, since the creditor could successfully resist the operation of these Boards.

In the third part of the Bill, the learned Law Member has considered it necessary to put in a further restriction by limiting the beneficial operations of the Sections only to a period of three years. The



LIBRARY ARCHIVES Kerala Legislative Assembly

intention of Government in passing a measure of this sort is to give some kind of relief to the needy and debt-burdened agriculturists. I heard the Law Member to say that the Government are not prepared to go against the vested rights except to the extent already indicated in the Bill. If the Government are prepared to go a step I ask them why not go a step further and save the majority of the agricultural population. Sir, I know that, when the Civil Procedure Code was amended, the law relating to interests then in force was repealed and a new provision, Section 31 of the Civil Procedure Code, was enacted. By that very enactment, debts have considerably increased. That provision of law was a direct attack on and a modification of the then existing contracts. Contracts were entered into on the basis that they would not be obliged to pay by way of interest anything more than what was provided for in Regulations I and IV of 1010. But by the passing of Section 31 of the Code of Civil Procedure, which was passed in the teeth of non-official opposition, the rate of interest was considerably increased and it affected the then existing contracts retrospectively. When such a measure can be passed, why this unnecessary restriction of limiting the operation of the reduction of interest to a period of 3 years, I ask? Why could that restriction not be taken off? Sir, this House in very unmistakable terms expressed its considered opinion that interest should be reduced with retrospective effect for the period of depression. The Law Member has not cared to give effect to that recommendation and has consequently minimised the relief that is sought to be given to the agriculturists. In regard to the passing of instalment decrees and of giving time for the payment of debts, the provision proposed in the Bill is too meagre and illusory.

In regard to the permanent measures of relief that are sought to be incorporated in the Civil Procedure Code, I have a few remarks to offer. The Law Member has thought it fit to introduce a provision which has been rejected by this House. I mean the provision for the foreclosure of mortgages. Even when a debtor has mortgaged his property worth Rs. 5,000, for a sum of Rs. 1,000, the mortgagee is permitted to foreclose it. This is taking away the vested right of the mortgagor to redeem the properties whenever it is convenient for him to do so. This is taking away a very valuable right of the mortgagor. In this connection, I wish to invite the attention of the House to a particular kind of pseudo mortgages which is very common in North Travancore, I mean the *Nadappu-panayam Pattacheetu*. This kind of transaction is intended to be only a hypothecation with the rent reserved as interest per annum. The actual possession of the property remains with the mortgagor and the mortgagee is not put in possession of the properties; nor is the mortgagee ever intended to be put in possession of the same. This is a device commonly adopted by the creditors to escape the law of income-tax and of compound interest. The idea is the income derivable from or of the actual value of, the properties

LIBRARY ARCHIVES Kerala Legislative Assembly

mortgaged cannot be considered to have ever entered into the mind, at the time, of the contracting parties. I submit, Sir, that, if these kinds of transactions are allowed to be foreclosed on the basis of being usufructary mortgages, I cannot imagine of a graver injustice done to the mortgagors. I submit, Sir, that this kind of transaction can and should be treated only as hypothecation with the rent reserved under the lease as interest per annum. I have the authority of the Committee who went into the question of agricultural indebtedness to support me in this my demand.

With these observations, I once again support the principle of the Bill, reserving that wide powers be left to the Select Committee,—if the Bill goes to the Select Committee—to modify the Bill in whatever manner it deems fit.

**MR. A. S. DAMODARAN ASAN** (*Mavelikara*) : Sir, I also support the principle of the Bill. I am glad that at least now the Law Member has chosen to introduce a Bill which was considered to be emergent even at the last meeting of the Assembly.

With regard to the scope of the Bill, as the Law Member himself admits that the bulk of the population in this country is composed of agriculturists, I am of opinion that it must be made sufficiently comprehensive. Corresponding to the Mahajana class in Madras or Sowcars in Northern India, we have no money-lending class as such. We find that almost every persons in this country is either an agriculturist as defined in this Bill or one who has much to do with such agriculture in his money transactins. So, in order to avoid further complications, I would suggest that the definition of agriculturists must be so changed as to bring within its scope every man who has any interest in agriculturists or their dealings. We will soon find sections of the public not benefitted by this measure clamouring for relief. I would, therefore, request that the definition of the word "agriculturist", should be so modified as to meet all possible groups of agriculturists.

Another factor to which I wish to draw the attention of the House is with regard to the exclusion of certain debts. The debts that are now sought to be excluded are not sought to be excluded on the ground that those would not work hardship on the agriculturists. The ground given for enacting this legislation is that the agriculturists are in need of relief. I wish to know whether the agriculturists are not in need of relief as far as those classes of debts are concerned. If they are in need of relief with regard to those classes of debts, I wish to know why those debts should be excluded. Are the creditors with regard to debts that are now sought to be excluded in a much worse condition than the debtors who now claim relief? Has it been established that those creditors are unduly indulgent to the debtors?

**DEPUTY PRESIDENT** : In the Statement of Objects and Reasons, it is stated that the agriculturists have been considered to be a very important class of people and it is for their relief that this Bill is introduced. If you want other debts also to come within the purview of the Bill, the very title of the Bill will have to be changed.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. S. DAMODARAN ASAN (*Mavelikara*): That is why I said I am in favour of modifying the definition of the agriculturists. I have my own doubts whether the Law Member would agree to my altering the title of the Bill.

I was submitting that I do not find any reason why certain classes of debts should be excluded. If those classes of debts are excluded, we will have to face a real difficulty when we come to the question of settlement of debts. I would like to know how the assets of a debtor are to be calculated without taking into consideration the debts that are sought to be excluded. A debtor as well as a creditor are bound to give a statement of his debts and claims, respectively. A debtor has to state whether any money is due to the Government or to the Co-operative Societies or to a Jenmi. All these details have to be disclosed by a debtor. The scope of the Conciliation Board, as is now contemplated in the Bill, is limited to the particular class of debts that are brought within the purview of this Regulation. That means, the Conciliation Board does not go into the question whether these kinds of debts really exist or not. Without ascertaining these facts, the amount of assets that is available for distribution amongst unexcluded creditors could not be ascertained.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Is not the Conciliation Board asked to go into the question?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): With regard to debts excluded here, nothing of the kind is possible.

So, what I suggest is that there is no justification for excluding any kind of debt of the agriculturist. All kinds of debts incurred by the agriculturist must be brought within the purview of this law.

In regard to the Conciliation Board, I am very glad to know that the Law Member is so optimistic with regard to the nature of the people in Travancore. The Conciliation Board could be worked satisfactorily, if four or five important conditions are satisfied. That is to say, the debtor and the creditor must be unusually reasonable men, prepared to accommodate each other; and the members of the Conciliation Boards must be persons of exemplary character with unusual persuasive capacity and prepared to work for any length of time even though they are sure that their labours are not assured to bear any fruit. I doubt very much whether any person having self-respect and honour could be found to serve on a Board, the decision of which would be set at nought by any of the parties to the dispute. A debtor goes to the Conciliation Board with a petition in the hope that his one-fourth or sometimes one-half of the assets might be set apart and that the balance alone would be distributed amongst the creditors. Thus he could save a portion of the property for himself in spite of the fact that his debts exceed his assets. On the other hand, a creditor goes to the Board in the hope that that is a place where the debtor is compelled to disclose all his assets from which he can get all the necessary details with regard to the debtor's condition and that he could successfully prosecute

LIBRARY ARCHIVES Kerala Legislative Assembly

a case in a civil court. Taking human nature as it is, we are sure that when the decision, which could not satisfy all the view-points of different parties, is known, one of the parties will back out in the hope that with the advantages that he has gained by the proceedings before the Board, he can get his claims settled through a civil court. If the conciliation Board is to work successfully, the amount of sanction behind its decision must be much greater than what is given at present. When persons of admitted responsibility and respectability are chosen and asked to enquire into the transactions of a particular class of debtors and creditors and after an honest enquiry into the matter they come to an equitable conclusion, it is only right that their decision is enforced. So what I would suggest with regard to the Conciliation Boards and the decisions given by them, is that any party who disagrees with the decision of the Board must be compelled to accept the same.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*) : What is the difference between Courts and Boards?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : In regard to that question, I do not want to say in the manner in which the Law Member answered one of the members. The function of the Conciliation Board could be seen from Clause 13 of the Bill which recites the points that should be considered for an equitable settlement. The Courts are bound to follow the laws of the land as laid down in the Statute and precedents and come to a decision based on legal considerations alone.

RAO SAHIB S. PARAMESVARA AIYAR (*Nominated*) : If that is so, should not all intricate legal questions be taken by the Board? Should not the Board contain men of legal experience?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Intricate legal points need not be gone into by the Board. The functions of the Board are entirely different. It is more or less an equity court.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*) : Then may I know whether the Board is at liberty to violate the existing laws?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : That is not what I meant. For considering the provisions contained in Clause 13 and the additional provisions which they may be asked to consider, in the Select Committee stage nothing further need be gone into.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*) : Can the Board treat a puisne mortgage and a prior mortgage on the same footing in regard to the discharge of debt?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : I am only explaining the functions of the Board as per Clause 13 of the Bill.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*) : Is it not dangerous that according to that suggestion we are allowing a wider latitude and discretion to Boards which are denied to Courts?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : We think that a wider latitude is very necessary. Otherwise this Bill need not come into existence at all. It has to be accepted so as to give some relief.

DEPUTY PRESIDENT You do not go to the extent of saying that Boards may even disregard the laws.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. S. DAMODARAN ASAN (*Mavelikara*): No. I only say that intricate legal questions need not be gone into by the Board.

RAO SAHIB S. PARAMESVARA AIYAR (*Nominated*): Suppose the genuineness of a document is repudiated by one of the parties, what has to be done?

MR. A S. DAMODARAN ASAN (*Mavelikara*): My friend thinks the genuineness of a document could be decided only by a court of law. In British India there is some sort of jury system. And the conclusions of the jury are based on facts. In all these cases, what is necessary is that the decision should be based on common sense. (*Laughter.*)

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): Are not parties entitled to withdraw from the settlement that may be brought about by the Board?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): That is what I am coming to.

There must be a certain amount of sanction behind the decision of the Board. What I would suggest is that, if the decision of the Board is not respected by any party, either the party that disregards the decision or the party who is aggrieved by the conduct of the dissentient party could go to a civil court and place the matter before them. What is stated here is that any person who resorts to civil courts without entering into an agreement as per the decision of the Board will be deprived of his costs and interests up to the date of the decree, if the court holds that his refusal to accept the decision was unreasonable. If, on a consideration of all the questions that are referred to in Clause 13, the court is of opinion that the Conciliation Board has decided fairly and equitably, the party who disobeys the decision of the Board must be asked to accept the same and act upon it.

With regard to Conciliation Boards, what I would suggest is that the Boards have a very heavy, responsible work to discharge. The real difficulty is not in the fact that there are no non-officials to conduct the business entrusted with them, but it is in the fact that there is much difficulty for the Government to find out the proper non-officials. I would prefer the appointment of a single officer, a single judicial officer of sufficient status, so that he may give a decision after the exercise of proper discretion. The Conciliation Boards are given very wide discretion, and, as remarked by my friend, a discretion which is not enjoyed even by any courts of the land. It is an extraordinary jurisdiction that is conferred upon the Conciliation Board or the particular officer appointed for the same. Moreover, if we look into the provisions, we would see that the jurisdiction that he has to exercise is that of the Insolvency Courts. They have also the jurisdiction of Equity Courts. So I would suggest that in preference to Conciliatiin Boards, judicial officers of status might be appointed for discharging the function that is entrusted to them.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If the decision of the Conciliation Board is not made binding on the parties, is it the opinion of the member that judicial officers should be appointed?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : I have already stated—

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I am asking whether, if the decision of the Board is not made binding on the parties, the member is of opinion that judicial officers should be appointed ?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : I have stated that there must be sufficient sanction or greater sanction behind the decision of the Board. No one asserts that all the persons who go to these Boards are dishonest or wicked. I would say that most of them are very shrewd and careful men who know how to take care of their interests. So it is better that some greater sanction is placed behind the decisions of these Boards.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : My question is whether assuming for a moment that the House is not prepared to concede that the conciliation should be binding on the parties, would the member advocate that the Boards should consist of judicial officers ? Does the member advocate that the single officer should necessarily be a judicial officer ?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Even if it is not made binding, it is better to have judicial officers.

DEPUTY PRESIDENT : Should it be a judicial officer or a man with experience of law ?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : When I said judicial officer, what I meant was that he must have the qualities of a judicial officer.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : So what the member means is that the officer should be a person who had opportunities of judging human affairs ?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Judging human affairs from a detached view-point.

These are the main points to which I wish to draw the attention of the House. I do not want to take any further time of the House. With these words, and with the hope that the Select Committee would consider all these points, I resume my seat.

MR. M. K. JANARDANA KAMMATH (*Commerce and Industry, North*) : വളരെക്കാലമായി കർഷകർ അനുഭവിച്ചുകൊണ്ടിരിക്കുന്ന കഷ്ടതകൾക്കു നിവാരണം ലഭിക്കത്തക്ക പല നിർദ്ദേശങ്ങളും ഈ ബില്ലിൽ അടങ്ങിയിട്ടുണ്ടെന്നുള്ളതിനു യാതൊരു സംശയവുമില്ല. എന്നാൽ ഈ ബിൽ ഇപ്പോൾ നടപ്പിലിരിക്കുന്ന കരാറുകളേയും വ്യാപാരനിലയേയും പരസ്പരവിശ്വാസത്തെയും സ്പർശിക്കുന്നൊകയാൽ കച്ചവടക്കാരുടെ പ്രതിനിധിയെന്ന നിലയിൽ എനിക്കു ഈ ബില്ലിനെക്കുറിച്ചു രണ്ടുവാക്കു പറയാനുണ്ടു. തിരുവിതാംകൂറിലുള്ള കച്ചവടക്കാർ അവരുടെ തൊഴിലുകൾ നടത്തിക്കൊണ്ടുപോകുന്നതു് കൊച്ചിയിലേയും ബ്രിട്ടീഷിന്ത്യയി

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. M. K. Janardana Kamath.]

ലേയും കച്ചവടക്കാരുടെ സഹായത്തോടുകൂടിയാണ്. ഇവിടെ ഇപ്പോൾ നടപ്പിലിരിക്കുന്ന കരാറുകൾക്കും നിയമങ്ങൾക്കും വിരുദ്ധമായി വല്ല നിയമങ്ങളും നടപ്പാക്കുന്നപക്ഷം അതു് കൊച്ചിയിലേയും ബ്രിട്ടീഷിൻഡ്യയിലേയും കച്ചവടക്കാരെക്കൂടി ബാധിക്കുന്നതും തൻനിമിത്തം തിരുവിതാംകൂറിലെ കച്ചവടക്കാക്കു മേൽപറഞ്ഞ കൊച്ചി മുതലായ കച്ചവടക്കാരുമായുള്ള കച്ചവടബന്ധത്തിനും വിശ്വാസത്തിനും സാരമായ ഹാനി തട്ടുന്നതിനു ഇടയായി തീരുന്നതുമാണ്.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): കൊച്ചിയിൽ ആറു മാസത്തേക്കു നടപടികൾ നിറുത്തിവച്ചിരിക്കുന്നതായി അറിയാമോ?

MR. M. K. JANARDANA KAMMATH (*Commerce and Industry, North*): നടപടി നിറുത്തിവച്ചിരുന്ന സമയം ഇപ്പോൾ കഴിഞ്ഞിരിക്കുകയാണ്.

MR. POTTAYIL S. KRISHNA PANICKAR (*Chertala II*): ഇനിമേൽ അവിടെ നടപടി നിറുത്തിവയ്ക്കുകയില്ലെന്നറിയാമോ?

MR. M. K. JANARDANA KAMMATH (*Commerce and Industry, North*): അതുകൊണ്ടു കച്ചവടക്കാരനു് ആശ്വാസകരമാണെങ്കിലും clause 2-ൽ "ആഗ്രിക്കൾച്ചറിസ്റ്റ്സ്" എന്ന പദത്തിന്റെ വിവരണത്തിൽ ജീവിതമാർഗ്ഗത്തിനു വേറെ എന്തു തൊഴിൽ ചെയ്യുന്നവനെയും കർഷകൻ എന്ന പദത്തിന്റെ വ്യാപ്തിയിൽ ഉൾപ്പെടുത്തിക്കാണുന്നുണ്ടു്. ഒരാൾക്കു കൃഷിയും കച്ചവടവും ഉണ്ടെന്നിരിക്കട്ടെ; അയാളുടെ പ്രധാനതൊഴിൽ കൃഷിയുമാണെങ്കിൽ അയാൾ വാങ്ങിച്ചിട്ടുള്ള കടം ഏതു ആവശ്യത്തിനാണെന്നു മനസ്സിലാക്കാൻ വളരെ പ്രയാസമാണു്. ആഡംബരത്തിനും അടിയന്തിരത്തിനുംവേണ്ടി അയാൾ കടംവാങ്ങി ഉപയോഗിച്ചിരിക്കാം. എങ്കിലും കൃഷിക്കാരൻ ആയതുകൊണ്ടു് അയാളുടെ കടം ഈ ബില്ലു് അനുസരിച്ചു കൃഷിക്കടമോ കൃഷിക്കാരുടെ കടമല്ലെന്നോ വിചാരിക്കാവുന്നതാണു്. കച്ചവടക്കാർക്കു കിട്ടേണ്ട സംഖ്യകൾ പിരിഞ്ഞു കിട്ടുന്നതിനു കാലതാമസമോ വല്ല തടസ്സമോ ഉണ്ടാകുന്ന എങ്കിൽ അവരുടെ നടപടികൾ ശരിയായി നടത്തിക്കൊണ്ടുപോകുന്നതിനു നിവൃത്തി ഇല്ലാതെ അവരുടെ തൊഴിൽ നശിച്ചുപോകുന്നതാണു്. ബില്ലിൽ വിവരിച്ചിരിക്കുന്ന clause 2 കച്ചവടക്കാർക്കു വളരെ ദോഷകരമാണു്. കച്ചവടക്കാരൻ കടക്കാരൻ എന്നുള്ള നിലയിൽ കൊടുത്തുതീർക്കുവാനുള്ള കടത്തിനു അയാളുടെ ക്രെഡിറേറഴ്സ് അയാളെ പിടികൂടുമ്പോൾ ക്രെഡിറർ എന്ന നിലയിൽ അയാൾക്കു കിട്ടേണ്ടതായ സംഖ്യ കൊടുക്കുവാനുള്ളവർ ഈ നിയമത്തിലെ വിവരണത്തിനെ ആശ്രയിച്ചു സംഖ്യ

LIBRARY ARCHIVES Kerala Legislative Assembly

കൊടുക്കാതിരിക്കുന്നതായാൽ കച്ചവടക്കാരൻ അവന്റെ കടം കൊടുത്തു തിക്കുന്നതിനു എങ്ങിനെ പ്രാപ്തനാകും?

MR. P. C. KURIYAN (*Kottayam I*): കച്ചവടക്കാരെക്കൂടി ഈ ബില്ലിന്റെ വ്യാപ്തിയിൽ ഉൾപ്പെടുത്തണമെന്നാണൊ അഭിപ്രായം?

MR. M. K. JANARDANA KAMMATH (*Commerce and Industry, North*): കച്ചവടക്കാരെ സംബന്ധിച്ചിടത്തോളം ഈ നിയമം ഡെറർ എന്ന നിലയിലോ ക്രെഡിറർ എന്ന നിലയിലോ ബാധിക്കുന്നതല്ലെന്നു വ്യക്തമായി പറകയോ അതല്ലാത്തപക്ഷം കൃഷിക്കായി വാങ്ങുന്ന കടത്തെ മാത്രം ഈ നിയമം ബാധിക്കുന്നതാണെന്നുള്ള ഭേദഗതിയോടുകൂടി ഈ നിയമം സ്വീകരിച്ചു കച്ചവടക്കാരുടെ നിലയെ സംരക്ഷിക്കയോ ചെയ്യേണ്ടതാണെന്നു ഞാൻ ഗവണ്മെന്റിനെ ഉൽബോധിപ്പിച്ചുകൊള്ളുന്നു.

MR. K. PADMANABHAN (*Chirayinkil I*): Sir, I support the principle underlying the Bill. The Bill is intended to give relief to the agricultural debtors of Travancore. Everybody in this House, I believe, will agree to the fact that some relief should be given to the agriculturists. The difference lies mainly with regard to the measures proposed in this Bill for affording relief. The most important provision for affording relief is that suggested by conciliation and Part II of the Bill is devoted for that purpose.

One fundamental objection which I would point out with regard to the conciliation measures is the optional character of the decisions of the Boards. When all the labour is over, at the last moment it is open to either party to say that he is not prepared to abide by the decision of the Board. In this respect, conciliation measures proposed in this Bill are defective. Provision should be made to make the decision binding on the parties.

The second objection which I would point out with regard to the Conciliation Board consists in their very constitution. From the speech of the learned Law Member we were able to understand that these Conciliation Boards have to perform functions almost akin to law courts. They have to take statements from parties, they have to frame issues on points of difference, they have to take evidence, they have to enter findings upon facts and also to decide questions of law. My humble submission is that, unless men with sound commonsense, good character and sufficient judicial experience are appointed as members of the Boards, these Boards would be a failure; nay they would even cause mischief. So what I would suggest is that, instead of going in for Conciliation Boards, why not we consider the question of entrusting these conciliation work also to the existing judicial tribunals of the land? It may be said that judicial tribunals existing in the land will not have enough time to look into the conciliation work. When conciliation measures are brought into effect, their work will diminish considerably.

In the remaining parts of the Bill certain reliefs are proposed to be given to the debtors. They are the provision regarding the reduction of interest, the payment of debt in instalments and also the provision



LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. K. Padmanabhan.]

regarding exemption from arrest. These provisions really afford substantial relief to the debtors. In the Statement of Objects and Reasons, it is stated that vested rights shall not be interefered with. My question is whether these provisions will not interfere with vested rights. This sort of interference with the private vested rights of the creditors of the land, I am afraid, will have a sort of reaction on the future economic life of the country. I submit that to a certain extent they will even paralyse credit transactions. That is a matter which this House has to seriously think of. If it affects the credit transactions in future, how is it possible for the agriculturists and other poor men to obtain loans? When a man is in need, he goes for loans; and if money is not advanced, the situation will be very serious. That is a very important question which this House will have to face.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon I*): What will the creditors do with their money if they do not advance? What does the member apprehend?

MR. K. PADMANABHAN (*Chirayinkil I*): I am thinking only of a possible condition. Most probably the creditor may not be inclined to give money to the agriculturists.

MR. P. C. KURIYAN (*Kottayam I*): Does the member think that the agriculturists will not get any money?

MR. K. PADMANABHAN (*Chirayinkil I*): I do not think so. Those who are able to give proper security and those who are able to return money will be able to get money. I do not say that these provisions are not necessary. These provisions are absolutely necessary; but at the same time, this House should make ample safeguards to protect against the anticipated reaction.

MR. K. M. KURIAKOSE (*Muvattupuzha II*): Why should the agriculturist get money if he is not able to return that?

MR. K. PADMANABHAN (*Chirayinkil I*): If he is not able to return money, he cannot go in for loans.

MR. P. C. KURIYAN (*Kottayam I*): One of the purposes of the Bill is to promote transactions between parties.

MR. K. PADMANABHAN (*Chirayinkil I*): That may be the object of the Bill; but my opinion is that this will be the result of the Bill if it comes into law. However, all these possible contingencies we have to consider sericusly. With these observations, I recommend that the Bill may be sent to a select Committee.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Sir, I believe it is too late in the day to go into the causes of agricultural indebtedness or the need of relieving agricultural indebtedness or the necessity of State interference in the matter and the unavoidable necessity of interference with contracts that are considered sacred and inviolable in normal times. Sir, the fact has been admitted that, owing to causes beyond the control of the agriculturist, owing to world forces, owing to the economic conditions, the agriculturist is in a very sad plight because he cannot get what he expected, as good an expectation as the expectation of the

LIBRARY ARCHIVES Kerala Legislative Assembly

returns that are due to those who hold documents of contracts or who claim under legal titles. He was not able to realise his expectations in a very much more intensive manner, and so it has been recognised both by the framers of the Bill and the Committee that studied very carefully this question that, owing to no fault of the agriculturist, he has come to a plight in which there is the necessity for the State to interfere because it is in accordance with public policy. There is also the inevitable necessity, which a Government worth the name has to undertake in times like this, of interference with contracts and legal obligations which are normally considered sacred and which are violated to the extent needed by a State which cares for the ultimate good of its people. Sir, this general proposition need not be discussed at this stage. Taking this for granted, the only question to be considered, in my opinion—and I am not going to concern myself with the details—is whether the interference made by the State to relieve the agricultural indebtedness is sufficient or adequate, or if not sufficient or adequate, what more measures should be adopted.

Sir, I read this Bill now presented before the House with the speech made by the learned Law Member at the time when the Bill of my honourable friend Mr. T. P. Velayudhan Pillai was rejected. Two grounds on which that Bill was attacked were that it gave inadequate relief to the debtor and it unnecessarily infringed upon the right of the creditor. So the Government said that they will draft a Bill which will be effectively relieving the distress of the agriculturists and which will not be unnecessarily interfering with vested rights. I take it that the speech made by the Law Member at that time very clearly expounds the policy which Government are prepared to undertake; and if that is taken for granted, whatever defects there may be in the provisions of this Bill, which are many and if we are going to discuss every point in it, it will take a long time; we may take it that Government have given the germs of relief measures that are recommended by the Committee and agreed to by this House; and I think this Bill has sufficient scope to enlarge itself upon this accepted basis that substantial relief must be given to the agriculturists and unnecessary interference should not be made with vested rights. The only difference of opinion is as to how far we can go. There may be difference of opinion with regard to that. After this general acceptance of basic ideas and when we are satisfied that certain kinds of remedies can be enlarged within the scope of this Bill, I do not think there need be much discussion with regard to the principle of the Bill and the frantic effort of throwing it out because the provisions do not give adequate relief. For example, my friends Mr. S. J. Nair and Mr. Krishna Panickar referred to the provision of reduction of interest. The Debt Redemption Committee themselves said with regard to that like this:—

> "We have received overwhelming evidence that, if real relief is to be brought to the agriculturist, substantial reduction should be made in the rates of interest applicable to the period of depression."

Sir, I wish to stress on that point a bit, because I think, over and above what doubtful benefit these Conciliation Boards may give, over

LIBRARY ARCHIVES Kerala Legislative Assembly

[MR. K. Kunjukrishna Pillai.]

and above every other relief that is provided for, a substantial, real and concrete relief can be granted to the agriculturists by the reduction of interest and this is amply justified. Why is it that we think it is necessary to give relief to the agriculturist? It is because we see that from 1105 onwards the depression set in. The commodity prices fell abnormally. He was not raising crops. And according to the Banking Enquiry Committee Report, he was not able to keep up his promise to pay up his dues. He was driven to a position which made him compulsorily unable to pay his obligations. So that the prime cause that led to this condition was the fall in prices, that set in in 1105 and from 1105 onwards the added burden of debts accumulated on account of the impossibility of meeting even his normal expenditure and the additional expenditure that he was bound to meet by way of interest charges. Therefore, if relief is granted, that should begin from 1105. There is every justification for this measure to be included in the relief policy. This has to be accepted, Of course, this is a matter of detail which has to be incorporated in the Bill. Because the question of reduction of interest and capital is admitted, provided both parties agree, whether this is sufficient or not is the only question to be considered; whether a general reduction is necessary is a matter that has to be considered; and I think it will be conceded as necessary, because of the fact that the depression was the cause of this dislocation and that dislocation can be remedied only by giving substantial relief which will overcome the evil effect brought about by the depression.

Another question I wish to bring to the notice of the House is with regard to instalments. No doubt, it is stated that the debts may be allowed to be paid in 12 instalments. We find every day that courts administer equity and justice differently and unless we provide some specific provision as to whether these instalments should be annual or biennial, or whether they should be spread over a definite period, it will work hardship on the poor agriculturist. Of course, I quite realise that there is necessity for giving a good deal of discretion in this matter to the courts. But unless we specify the period of one instalment and the maximum period of duration, it will work hardship. There must be some guidance, some real guidance given to these courts. Otherwise they may not exercise their discretion, on behalf of the poor debtor.

One more point I shall touch and resume my seat. That is with regard to the inclusion of co-operative debts also within the purview of agricultural debt. It is found, from the Agricultural Debts Redemption Committee Report, that nearly 40 lakhs of rupees are due as debts to the various co-operative societies in the State. And two officers, the present Registrar of Co-operative Societies and a former Registrar of Co-operative Societies, Mr. R. Vaidyalingom Pillai, who had long experience of this branch of activity, have definitely stated that co-operative debts need not be exempted from the operation of this Bill. I do not think any more weighty authority regarding this need

LIBRARY ARCHIVES Kerala Legislative Assembly

be cited for including these debts also within the purview of these relief measures. As a matter of fact, we find it is only these Co-operative Societies in Travancore who claim a bigger rate of interest than the normal interest that is charged, *viz.*, 12 per cent. We find that the Co-operative Societies, as a matter of fact, are collecting, including penalty, nearly 16 per cent., or to be more accurate, 15¾ per cent. interest.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): May I know whether Government demands should also be included in this measure?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I would personally like that the Government demands should also be included because Government is also a creditor and there should be no distinction between creditors. But that is a matter of public policy. Another question should also be considered, *viz.*, whether Government have also been realising abnormal interest. When that point is considered along with the rate of interest realised by Co-operative Societies, we find that Government were very lenient with regard to rate of interest and they allowed payment in instalments also. It has also to be considered that Government money is public money and it is the money ultimately of the people; and whether we can take it to benefit a particular portion of the public, *viz.*, the agriculturists, is a matter on which there may be difference of opinion. Personally, I think, agriculture being the mainstay of the State and agriculturists being the basis of society and Government, such a measure can be taken if the circumstances warrant. But under no circumstances, I think, Co-operative Societies can be exempted and it will be found that only small agriculturists are debtors to Co-operative Societies. If there is any class of people who are in need of relief and who stand in need of protection of the State, it is these agriculturists who have borrowed money from Co-operative Societies. (*Hear, hear*) I can find absolutely no ground on which these Societies should be exempted.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Cannot action under the Co-operative Law bring relief to the co-operative debtors?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): It can. But we do not know when it comes. We are in need of speedy relief. Time is the essence of the matter.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Even under the existing Co-operative Law, is it not possible to devise measures to reduce interest?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): The Registrar may introduce provisions to that effect or induce the Societies to reduce the interest.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is the Co-operative Law intended to help the debtor to get relief?

LIBRARY ARCHIVES Kerala Legislative Assembly

**MR. K. KUNJUKRISHNA PILLAI** (*Quilon I*): No.

**MR. E. V. KRISHNA PILLAI** (*Pattanamtitta*): When there is a specific provision in this Bill that co-operative debts should not be included in this Bill, will the Registrar of Co-operative Societies agree to reduce the rate of interest?

**MR. K. KUNJUKRISHNA PILLAI** (*Quilon I*): Exactly that is the position. Even now, when the option is given to the Co-operative Societies to reduce the rate of interest, all of them are not coming forward with that relief in favour of the debtor. Now, this Bill specifically and clearly says that the Co-operative Societies should be exempted from the operation of this enactment. In the light of that specific provision, I am sure no society will hereafter come forward with any kind of concession in favour of the debtor. Moreover, in the Madras Act, the Co-operative Societies also come under the corresponding enactment there. Therefore I do not think much argument is needed for including the Co-operative Societies also within the scope of this Bill.

Hoping that the principle of this Bill will be accepted by the House and that adequate safeguards in the interests of the agricultural debtors of the country can be provided for in this measure, I have very great pleasure in supporting its general principle. This is an enactment which has been long overdue.

**MR. N. E. VARUGHESE** (*Tiruvalla I*): സർ, ഈ സഭയുടെ ആലോചനയ്ക്ക വിഷയമായിരിക്കുന്ന ബില്ലിന്റെ തലവാചകത്തിലുള്ള തത്വത്തോട് ഞാൻ പൂർണ്ണമായി യോജിക്കുന്നു. കർഷകന്റെ വിഷമത്തിനു ചില കുറവുകൾ വരുത്തണമെന്നുള്ളതാണ് ബില്ലിന്റെ ഇംഗ്ലീഷ് പേരുകൊണ്ടു അർത്ഥമാകുന്നത്. തിരുവിതാംകൂറിലെ കർഷകന്മാർ സഹിക്കാൻ വഹിയാത്ത ഭാരത്താൽ അമർത്തപ്പെട്ടിരിക്കയാണ്. ഉൽപന്നങ്ങൾക്ക വിലക്കുറവുവന്ന ഫ്ര ൦ ൪-ാമാണ്ടു മുതലുള്ള കടത്തിനു പലിശ കൊടുക്കാൻ നിവൃത്തിയില്ലാതെവന്ന കടത്തിന്റെ സംഖ്യ വളരെ വർദ്ധിച്ചിരിക്കുന്നു. ഫ്ര ൦ ൫-നുമുൻപു മഹായുദ്ധത്തിനുശേഷം ഉൽപന്നങ്ങളുടെ വില സീമാതീതമായി വർദ്ധിച്ചിരുന്നു.

**DEPUTY PRESIDENT**: The causes of adversity need not be gone into. That is accepted.

**MR. N. E. VARUGHESE** (*Tiruvalla I*): കർഷകർക്ക വന്നുചേർന്ന ഭാരം എങ്ങിനെയാണു ഞാൻ വിശദമാക്കുന്നത്?

ഉൽപന്നങ്ങൾക്ക വില വർദ്ധിച്ചതുകൊണ്ടു വസ്തുക്കൾക്കും വില വർദ്ധിച്ചു. ജീവിതരീതി ഉയർന്നു; ചിലവും വർദ്ധിച്ചു.

**MR. K. R. ELENKATH** (*Kalkulam I*): അന്നത്തെ സ്ഥിതികൾ ഇതൊന്നുമല്ലെന്ന ഇവിടെ ആരും പറഞ്ഞില്ലല്ലൊ.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. N. E. VARUGHESE (*Tiruvalla I*) : അപ്പോഴത്തെ സ്ഥിതിയെപ്പററി പറഞ്ഞതേയുള്ളു.

DEPUTY PRESIDENT : ബില്ലിന്റെ ഗുണദോഷങ്ങളെപ്പററി പറഞ്ഞാൽമതി.

MR. N. E. VARUGHESE (*Tiruvalla I*): അതുതന്നെയാണു പറയുന്നതു്.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : ഏപ്പോഴത്തെ കാര്യത്തെപ്പററിയാണു മെമ്പർ പറയുന്നതു്?

MR. N. E. VARUGHESE (*Tiruvalla I*) : ആ കാര്യമെല്ലാം വിവരമായി പറഞ്ഞുകഴിഞ്ഞു.

MR. K. M. KURIAKOSE (*Muvattupuzha II*) : Sir, are we closing this item of business today? I want to know the position.

DEPUTY PRESIDENT : Mr. Kuriakose, you are entirely out of order in raising that point now. You could have done it when no member was in possession of the House. When you stood up, I thought you merely wanted to put a question to Mr. Varughese. Any enquiry of the Chair as to the time-limit does not arise now.

MR. K. M. KURIAKOSE (*Muvattupuzha II*) : I apologise, Sir.

DEPUTY PRESIDENT : I did not want to make it a serious matter; you need not apologise.

MR. N. E. VARUGHESE (*Tiruvalla I*): കർഷകരുടെ ഭാരത്തെ കുറയ്ക്കണമെന്നുദ്ദേശിച്ചാണു് ഈ ബിൽ കൊണ്ടുവന്നിരിക്കുന്നതു്. എന്നാൽ ഈ ബില്ലിൽ അടങ്ങിയിരിക്കുന്ന ഓരോ വകുപ്പിനേയുംപററി പഠിച്ചാലോചിക്കുമ്പോൾ കർഷകനു ശരിയായ പ്രതിവിധി ഇതുകൊണ്ടുലഭിക്കുന്നില്ല എന്നു കാണാവുന്നതാണു്. കർഷകന്റെ ഭാരം കുറയ്ക്കുന്നതിനു പഠിച്ചതമല്ലെങ്കിൽ എന്തു റിലീഫ് ആണു് ഈ ബിൽകൊണ്ടുദ്ദേശിക്കുന്നതു്?

DEPUTY PRESIDENT: I cannot permit Mr. Varughese to go on in that strain.

MR. N. E. VARUGHESE (*Tiruvalla I*) : ഞാൻ ഈ ബില്ലിന്റെ തലക്കെട്ടിനെപ്പററി മാത്രമേ പറഞ്ഞുള്ളു.

കർഷകന്റെ ഭാരത്തെ കുറക്കത്തക്കവിധത്തിൽ പലിശകാര്യം സ്വീകരിക്കുന്നതിനു ഗവണ്മെന്റിനു സാധിക്കുമെന്നാണു് എന്റെ അഭിപ്രായം. ഫ്ലാറ്റ് മുതൽക്കാണു് ഉൽപന്നങ്ങൾക്കു വില കുറഞ്ഞതു്. അന്നു നിശ്ചയിച്ചിരുന്ന പലിശ പന്ത്രണ്ടു ശതമാനമാണു്. പണം, വസ്തു വാങ്ങിക്കുന്നതിനും ദിനവൃത്തി കഴിക്കുന്നതിനും

LIBRARY ARCHIVES Kerala Legislative Assembly

ആണല്ലൊ സാധാരണയായി വിനിയോഗിച്ചുവരുന്നത്. ഇന്ന നിലവിലിരിക്കുന്ന പലിശക്രമത്തെ കുറക്കുന്നതുകൊണ്ട് ഉത്തമർണ്ണനു യാതൊരു ദോഷവും വരാനില്ല. മൻപ് ആയിരംരൂപയ്ക്കു വിലയ്ക്കുവാങ്ങിയിരുന്ന രണ്ടേക്കർ സ്ഥലത്തിനു ഇപ്പോൾ ൪൦൦രൂപതന്നെ കിട്ടുമോ എന്നു സംശയമാണ്.

MR. K. R. ELENKATH (*Kalkulam I*): ഈ ബില്ലിൽ ഏതു ക്ലാസ്സിനെപ്പറ്റിയാണു പറയുന്നത്?

MR. N. E. VARUGHESE (*Tiruvalla I*): ക്ലാസ് ക്ലാസ ആയിട്ടു ബില്ലിനെ വിമർശിച്ചുകൂടാ എന്നു ചട്ടമുണ്ട്. പൊതുവിമർശനമാത്രമെ ചെയ്യാൻ പാടുള്ളു.

MR. P. C. KURIYAN (*Kottayam I*): I want to know how, without knowing whether there are provisions in the Bill affording relief to the debtor or not, he is able to support the principle of the Bill. I presume he is supporting the Bill.

DEPUTY PRESIDENT: He did not say that he supports the Bill; just wait and see.

MR. N. E. VARUGHESE (*Tiruvalla I*): ഇപ്പോഴത്തെ പലിശനിരക്കു കുറക്കുന്നതുകൊണ്ടു യാതൊരു ദോഷവും ഉണ്ടാകുകയില്ല. ഒരു കരാർ ചെയ്തുപോയി എന്നിരുന്നാലും അതു് സുസ്ഥിരമായ ഒരു അവകാശമാണെന്നു വരുന്നതല്ലല്ലൊ. അങ്ങനെയുള്ള നിയമങ്ങളെ ഭേദപ്പെടുത്തുന്നതിനു ഗവണ്മെൻറിനും നിയമസഭക്കും അധികാരമില്ലേ? കരാറുകളെല്ലാം കടലാസിൽമാത്രം സ്ഥിതി ചെയ്യുന്നവയാണ്. എത്രയോ കരാറുകൾക്കു ഇപ്പോൾ മാറ്റം സംഭവിച്ചുകൊണ്ടിരിക്കുന്നു.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): തൻനിമിത്തം വല്ല യുദ്ധമോ മറ്റോ ഉണ്ടാകുകയില്ലേ?

MR. N. E. VARUGHESE (*Tiruvalla I*): യുദ്ധം ഉണ്ടായാൽ എന്താണ്? കരാറുകളെല്ലാം ആവശ്യമനുസരിച്ചു സൃഷ്ടിക്കപ്പെടുന്നവയാണ്. അതുകൊണ്ടു ബാംകുകാക്കൊ മറ്റോ കുറെ ബുദ്ധിമുട്ടുകൾ ഉണ്ടാവാം. ബാംകുകാർ ആരെക്കൊണ്ടാണ് പിഴക്കുന്നത്? കർഷകൻ ഇല്ലെങ്കിൽ ബാംകുകാരോ ഗവണ്മെൻറുദ്യോഗസ്ഥന്മാരോ ഉണ്ടോ? അതുകൊണ്ടു കർഷകന്റെ ആവശ്യത്തെ മുൻനിറുത്തി ഏതുവിധത്തിലെങ്കിലും അവരെ സഹായിക്കേണ്ടതു് ഗവണ്മെൻറിന്റെ പ്രധാന ചുമതലയാണ്. അങ്ങിനെ ചെയ്തില്ലെങ്കിൽ കർഷകൻ തീരെ നശിച്ചുപോകുന്നതാണ്. കർഷകൻ മരിച്ചാൽ ആർ ജീവിക്കും? കർഷകന്റെ ക്ഷേമമാണ് രാജ്യത്തിന്റെ ക്ഷേമം. അതിനാൽ ൪൪൦൫മുതല്ല

LIBRARY ARCHIVES Kerala Legislative Assembly

തന്നെ പലിശകുറച്ചു കർഷകനെ സഹായിക്കണം. ഈ നിയമസമിതിയുടെ ആലോചനയോടുകൂടി ഈ കടങ്ങളെയെല്ലാം ഒതുക്കിത്തീർക്കാനുള്ള ധാരാളം സാധിക്കുന്നതാണ്.

**RAO SAHIB S. PARAMESVARA AIYAR** (*Nominated*) : ഇന്നുള്ള കടമെല്ലാം ഒതുക്കിത്തീർക്കുന്നതിനു എത്ര രൂപാ വേണമെന്നറിയാമോ?

**MR. N. E. VARUGHESE** (*Tiruvalla I*) : മുൻപു് നൂറുരൂപാ വിലയുണ്ടായിരുന്ന ഭൂമിക്കു ഇപ്പോൾ അറുപത്തഞ്ചോ എഴുപതൊരൂപാ മാത്രമേ കിട്ടുകയുള്ളൂ. അതുപോലെ നൂറുരൂപയുടെ കടം അറുപത്തഞ്ചോ എഴുപതോ രൂപയ്ക്കു തീർത്താൽ എന്താണു് തരക്കേടു്? അങ്ങനെചെയ്താൽ ബില്ലിൽ പറയുന്ന കൺസിലിയേഷൻബോഡ്ഡിന്റെ ആവശ്യം ഉണ്ടാകുകയില്ലല്ലോ. സാധനങ്ങൾക്കുവില പകുതിയിലധികമായി കുറഞ്ഞിരിക്കുന്നതുകൊണ്ടു് ഇപ്പോഴത്തെ കടവും അതിനനുസരണമായി കുറക്കാവുന്നതാണ്.

**MR. A. S. DAMODARAN ASAN** (*Mavelikara*) : പണത്തിന്റെ വില കുറയുമ്പോൾ നിയമവും മാറണമെന്നാണോ പറയുന്നതു്?

**MR. N. E. VARUGHESE** (*Tiruvalla I*) : അതു് ആ കാലത്തു ചെയ്താൽ മതിയല്ലൊ. അന്നന്നുള്ള ആളുകളുടെ മനസ്ഥിതിയനുസരിച്ചു നിയമം ഉണ്ടാക്കിയാൽ മതി.

അതിനാൽ കടത്തിന്റെ തുക കുറക്കത്തക്കവിധത്തിൽ നിയമം ഉണ്ടാക്കുന്നതുകൊണ്ടു യാതൊരു ദോഷവും ഉണ്ടാകുകയില്ല. അങ്ങിനെ ചെയ്താൽ കൺസിലിയേഷൻ ബോർഡിന്റെ ആവശ്യംകൂടാതെതന്നെ കാര്യം എളുപ്പത്തിൽ സാധിക്കാവുന്നതാണു.

**RAO SAHIB S. PARAMESVARA AIYAR** (*Nominated*) : നൂറുരൂപാ കൊടുക്കേണ്ടവനു് ഒരു രൂപ കൊടുത്താൽ ആ സംഖ്യ വാങ്ങിക്കൊണ്ടു് നൂറു രൂപായുടെ കടം തീരത്തക്കവിധത്തിൽ നിയമം ഉണ്ടാക്കണമെന്നാണോ അഭിപ്രായം?

**MR. N. E. VARUGHESE** (*Tiruvalla I*): ഇപ്പോഴത്തെ സ്ഥിതിക്കനുസരണമായി നിയമം ഉണ്ടാക്കണം.

**MR. KAYALAM PARAMESVARAN PILLAI** (*Additional Head Sirkar Vakil*): കർഷകന്റെ ഭൂമി വിലക്കുകൊടുത്തു കടം തീർക്കണമെന്നു ചട്ടം ഉണ്ടാക്കിയാൽ അതു് നല്ലതാണോ?

**MR. N. E. VARUGHESE** (*Tiruvalla I*): പണത്തിനു ഇപ്പോഴുള്ള വിലയനുസരിച്ചു കൊടുക്കൽവാങ്ങൽ നടത്തണം.



LIBRARY ARCHIVES Kerala Legislative Assembly

**DEPUTY PRESIDENT:** I am very happy that you have understood that. (*Laughter*.)

**MR. P. C. KURIYAN** (*Kottayam I*): Is the member aware that these conditions do not exist in Russia?

**DEPUTY PRESIDENT:** Do you really wish to go to Russia for this purpose?

**MR. N. E. VARUGHESE** (*Tiruvalla I*): കൈനനയാതെ മീൻ പിടിക്കണമെന്നും, ഉത്തരത്തിലെ എട്ടുക്കയും വേണം കക്ഷത്തിലെ പോകയുമരുത് എന്ന പഴഞ്ചൊല്ലിൽ പറയുന്നതു പോലുള്ള ഒരു നയമാണ് ഗവണ്മെന്റു ഈ വിഷയത്തിൽ സ്വീകരിച്ചിരിക്കുന്നതു. അതു പോരാ, മുന്നണിയിൽ നിന്നു സഹായിക്കേണ്ടതു ഗവണ്മെന്റാണ്. അതു് കണ്ടുവേണം മറ്റുള്ളവർ പ്രവർത്തിക്കാൻ. അതുകൊണ്ടു് ഗവണ്മെന്റു കുറെ നഷ്ടം സഹിക്കണം. കർഷകനുവേണ്ടി ഗവണ്മെന്റു കുറെ നഷ്ടം സഹിച്ചാൽ മറ്റൊരുവശത്തു കൂടി ആ നഷ്ടം നികത്തുവരും.

**RAO SAHIB S. PARAMESVARA AIYAR** (*Nominated*): Sir, I rise to support the principle underlying the Bill before this House. That principle has been succinctly enunciated in the Statement of Objects and reasons which accompanies the Bill. An attempt is made to devise special measures for giving relief to agriculturists in Travancore. That such relief is not only necessary, but it has long been overdue, is a fact about which there cannot be two opinions. At this stage, it is not possible for me to state all that I feel in respect of certain clauses of this Bill. I only wish to make certain observations on a few points.

In the first place, I have carefully considered the question whether co-operative societies should be taken out of the purview of this Bill or whether they should be included in the Bill itself; and I have arrived at the conclusion that there is absolutely no justification for placing them outside the ambit of this Bill. As far as I have been able to understand the working of co-operative societies in Travancore, they are not in any way better in the matter of affording relief to agriculturists than private individuals and whatever law is now going to be made to apply to the other creditors should be made to apply to co-operative societies as well.

**MR. E. V. KRISHNA PILLAI** (*Pattanamtitta*): What about loans payable to Government?

**RAO SAHIB S. PARAMESVARA AIYAR** (*Nominated*): I am of the same opinion as Mr. Kunjukrishna Pillai in that matter. A great deal has already been said on that subject. After 1105, I know that many agriculturists have not been able to pay land tax. That is one reason why they have found it necessary to borrow large amounts from crediters. If any relief could be afforded by the Government in the matter of the

LIBRARY ARCHIVES Kerala Legislative Assembly

recovery of a portion of their tax until such time as economic conditions improve, it will be a great boon and blessing to all agriculturists. But that is a different matter, I do not want to mix it up with the provisions of the present Bill.

As regards Debt Conciliation Boards, I heard my friend Mr. Asan, and I was glad when he said towards the close of his speech that the officers who would have to deal with debt conciliation should be officers with a judicial frame of mind and, I believe, with some judicial experience. That seems to me, Sir, to be very necessary. Otherwise, these officers will not be able to function properly or grant satisfactory relief to the parties that appear before them, especially when vakils have a right to come before the Boards and discuss complicated questions of law and fact before those Boards. I would prefer one officer appointed by Government to a Board composed of two or three members. The cost, I am afraid, would come to a large amount, because the officer referred to should be one of some status, and he has to be a full-time officer. In that case, even if an officer on a salary of Rs. 200 is to be appointed and thirty such officers have to be appointed, one for each taluk, the cost will come to Rs. 72,000 for the officers alone. Then each officer will have to be assisted by a staff and other paraphernalia and thus not less than one lakh of rupees will have to be allotted by Government for the purpose. I take it that the Government will defray the expenditure out of their own pocket and that no portion of it will have to be paid by the public. It is only in that case that the appointment of these officers will be justifiable. I find that in the Central Provinces only two centres were created at first and gradually that number was raised to eight. But, that will not be enough in Travancore. If these officers are to function, I think that, in all taluks, officers have to be appointed simultaneously, because it cannot be said that any one taluk needs these officers more than any other taluk.

Then it is left to the rule-making powers of the Government to settle the pucuniary jurisdiction of these officers. I think that this jurisdiction should be definitely mentioned in the statute itself and not left to the Government to decide later. As regards local jurisdiction, it is a minor matter which may be settled by the Government while framing the rules.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): What does the member suggest in regard to pecuniary jurisidiction ?

RAO SAHIB S. PARAMESVARA AIYAR (*Nominated*): That may be settled at the Select Committee stage.

Clause 22 of the Bill appears to me to contain a rither strange provision. It says:—

> "If, in compliance with a notice under Section 8, a creditor does not duly furnish the statement of the debts owed to him, his debts shall be deemed for all purposes and all occasions to have been duly discharged".

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Sahib S. Parameswara Aiyar.]

That to my mind is a very dangerous provision. No doubt, the Debt Conciliation Board should be supported by sanctions. But this provision appears to be going rather, too far. We know that, in many cases, notices will not in fact be received by the parties concerned; and though there is a provision here for setting aside *ex parte* decisions, that, in some cases, is a difficult process for the parties to go through. There should at least be a provision in the Bill for registered notices being sent to the parties and accepted by them.

Next, as regards Section 38, though it has been introduced here with a view to afford relief to the debtors, I find that there is a great deal of outcry from the debtors that this provision is unfair and uncalled for. The Bill has been introduced in the best interests of the debtors themselves, and if they do not want this provision, it will be desirable to delete it.

As regards the second portion of that clause which exempts the arrest of agriculturists, I am wholly in favour of that provision being retained, provided that it is a temporary measure and that similar relief is afforded to all debtors, whether agricultural or not. If it is a measure introduced in the interests of judicial reform, I can appreciate the position that no subject of His Highness the Maha Raja should be arrested as a civil debtor and locked up in civil jail. That is a position which I can easily understand. But if relief is to be granted to agriculturists alone, it need be given only for a period of three years as a temporary arrangement.

I have got several other minor items to speak upon, but I do not wish to take up the time of the House any further.

MR. K. M. KURIAKOSE (*Muvattupuzha II*) : Sir, to me it seems that the most important point to be discussed with regard to this Bill is the question of retrospective effect. I had my own suspicion whether that comes within the scope of this Bill. I heard Mr. Kottur to say that, since the question of interest and capital can be dealt with at length in the Select Committee, the question of restrospective effect could also be taken up there. I have my own doubts whether this question comes within the scope of this Bill. I would like to hear the Law Member in regard to that point. It appears to me that the most important provision should be about extension of relief to debts from 1105. Otherwise there is no use of this legislation.

The second point to be considered is in regard to Conciliation Boards. I am one with other members in saying that, unless powers of an exact and authoriative nature are given to the Conciliation Boards these Boards are of no use. It is just like fining a man and telling him that he may or may not not pay it according to his will. The very intention with which Conciliation Boards are instituted is to have summary and speedy disposal of cases. But if the Board is only to be an advisory body, that will only increase the time within which the debt should be settled. If the parties disagree, then they have an

LIBRARY ARCHIVES Kerala Legislative Assembly

opportunity of going into the law courts and prolonging the case. Therefore, if you want to effect a speedy remedy, it is absolutely necessary that the Conciliation Board should have summary powers. I have some experience of conciliation. The first thing that a man asks you when you approach him for conciliation is whether you are bound to abide by his decision. If you are not bound by his decision, then he will not mediate for you. Therefore Conciliation Boards should have summary authority. We have also our own apprehension of not getting the best men for the Board. I agree with Mr. Padmanabhan in his suggestion to invest the Munsiffs with the authority of conciliation.

**MR. R. RAMAN PILLAI** (*Changannachery* cum *Peermade II*): May I know whether there is any difference between arbitration and conciliation?

**MR. K. M. KURIAKOSE** (*Muvattupzha II*): Sir, we are enacting a law to legalise arbitration.

**MR. R. RAMAN PILLAI** (*Changanachery* cum *Peermade II*): Is not an award given by an arbitrator legal?

**MR. K. M. KURIAKOSE** (*Muvattupuzha II*): Yes. The Board should be given powers to make its award effective.

With regard to the rate of interest, the principle under which interest can be demanded from the debtor by the creditor is that it depends upon the profit that has accrued from the investment. If that investment cannot bring him at least the specified interest, it is only just and human that the creditor should not demand a greater rate of interest. Is there not an understanding between them that the debtor is going to make use of the money for a certain profit? If that profit is not derived, then the creditor should cut down the rate of interest himself whatever might be the provisions in the document. I think that, in the present circumstances, the maximum rate of interest should not be above 3 per cent. and that with effect from 1105 onwards.

Sir, one word in regard to the kind of mortgage that exists in North Travancore. This was referred to by Mr. Krishna Panickar. What is generally done by way of security for the interest on the mortgage is to have a separate simple lease deed. In the majority of cases, the lease amount would be very much higher than the interest given by a law court. This transaction is a double trick played on the debtor and the Government. The creditor can escape from the law of income-tax. So it is only in the interests of the debtor and the Government that this should be included in the scope of the Bill. As an illustration, I will mention the case of one mortgage document executed in the Angamali Sub-Registrar's Office. Its number is 2,560 and the amount is Rs. 260. On the same day, another simple bare document, No. 2561, is registered for Rs. 23-as-12. as a security for the interest to be derived on Rs. 260. I do not think that any further argument is needed to show that this is a fraud played upon the debtor and the Government.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. K. M. Kuriakose]

With these words, I support the principle of the Bill hoping that the Select Committee will be given very wide powers to reconsider all points elaborately and without restrictions.

**DEPUTY PRESIDENT**: I gather that there are several members who wish to speak on this Bill. The Law Member wants to make a statement. I think it will be making our work easier if I ask the Law Member to make his statement.

**MR. KAYALAM PARAMESVARAN PILLAI** (*Additional Head Sirkar Vakil*): Sir, I am sure that all the members are anxious that the first and the second readings of this Bill are got through as early as possible. My plan is that the Select Committee should sit on Tuesday or Wednesday and finish the Bill within, say, five days, so that a meeting of the Assembly may be called in Edavam or Mithunam next for the purpose of considering the Bill as reported by the Committee. To achieve this, it is necessary that the House should finish its discussion to-day. There is also another urgent Bill, namely, the Rubber Control Bill, to be got through. If that also can be got through to-day, I can promise to call the Committee to sit on Tuesday (though a holiday) or on Wednesday and to continue for the whole of the week. It is possible that the Committee may finish the Bill in four or five days. If that be so, we can have the measure passed finally in Edavam or Mithunam at a meeting of the Assembly called specially for the purpose. But it is necessary that the House should pass on to Committees both of these Bills to-day.

**MR. T. KRISHNA PILLAI** (*Neyyattinkara II*): Are we to take it that this Bill will be taken to the Select Committee?

**DEPUTY PRESIDENT**: I was under the impression that the statement to be made by the Law Member would shorten the discussion. The Law Member is very anxious to push on with this Bill. I hope the House also will be equally anxious. But that does not mean that the rights of members to have their say on this Bill are not to be exercised. The President has given a ruling this morning that this Bill should be finished to-day. Of course honourable members will consider that aspect. Each member will place himself under a self-denying ordinance in regard to time and not put the Chair to the necessity of calling him to time.

M. P. K. Narayana Pillai will now speak.

**MR. P. K. NARAYANA PILLAI** (*Ambalapuzha I*): Sir, I beg to offer a few observations upon the Bill under discussion, though, let me add, my views may undergo modifications in the light of the subsequent consideration and discussion of the vexed questions presented by the Bill. It is refreshing indeed to note that the Law Member seems to show a great inclination to take both sides of the question into account. I mean the case of the debtor as well as the creditor; and he has considerably relaxed the limpet-like tenacity with which he found it possible to maintain intact the recommendations of the Committee that sat upon this subject when their valuable report came up for consideration in the House.

LIBRARY ARCHIVES Kerala Legislative Assembly

No doubt, Sir, the agriculturists have fallen on evil days. It has been observed by some members in this House that the agriculturists are the backbone of the State. But what about the back-bones of the agriculturists themselves? Those organs seem to be completely crushed. A number of causes seem to operate in adversely affecting the interests of the agriculturists. The great importance of the agriculturist is recognised by the State. I raise the humble question whether it is not the primary duty of the State itself to afford adequate relief to the agriculturists. Or, is it merely a question of inflicting a penalty upon private individuals for their folly in having accommodated the agriculturist in his hour of need? Yet what do we find? The agriculturists say that the burden of taxation in many centres in Travancore, especially South Travancore, is so heavy as to be the cause of considerable despondency. The cost of cultivation, fall in the price of the staple articles, all these cause so much hardship that it is impossible to conduct agricultural operations with any expectation of any margin of profit. Irrigation, drainage and lines of communication are sources of standing grievances with agriculturists; and in spite of amicable relations with the Chief Engineer, I am tempted to declare something like a perpetual warfare against him and his department. The Agricultural Department was inaugurated with the *fanfaronade* that after its inauguration, intensive and extensive cultivation would be resorted to on scientific lines. Yet, look at the fate of the agriculturists. Their position is going from bad to worse ever since its inauguration. These are points which deserve considerable attention at the present time. These are the root causes that have now resulted in increasing the indebtedness of the agriculturists. This measure that is before the House does not take them into account. If the Government are aware of these facts, why should they play the ostrich, without making any serious attempt to face them?

**DEPUTY PRESIDENT:** The Statement of Objects and Reasons discloses the fact that Government want to afford relief to the agriculturists' debts.

**MR. P. K. NARAYANA PILLAI** (*Ambalapuzha I*): I am aware of the idea underlying the Bill. But is it adequate? Is it possible for the agriculturist of our State to get along, so long as these abiding causes are there to drag him again into debt? That is my point. I point out that the measure before the House is quite inadequate and it is something like fixing attention of the twigs to the exclusion of the roots and trunk. Then, with respect to the merits of the measure itself, I find this is planned upon a modified form of the Insolvency Regulation of the State. That seems to be the foundation of the proceedings provided for in this measure, *viz.* the inability to pay. The debtor or the creditor may move the Conciliation Board for an amicable adjustment of the debts due. At the same time, I asked the Law Member whether the Insolvency Regulation would be abrogated in Travancore for a period of three years during which this Bill is contemplated to be in force. He says, it would be left intact. If that is the case, I ask whether it is not open to any creditor to circumvent Conciliation Boards and betake himself to ordinary insolvency courts to sit tight over the

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. P. K. Narayana Pillai]

debtor. Therefore in one sense, subject to correction, the Bill as it appears to me is somewhat illusory, if it is simply to be rested upon an inability to pay. What is this Conciliation Board then? Its powers have not been definitely laid down. The limits of its jurisdiction are left with Government to decide. Can this House accept a position like that, representing as the House does the people of the State? In the case of the Munsiffs, the legislators were not prepared to trust them with a jurisdiction beyond Rs. 2,000. Recent attempt to enhance the jurisdiction of the Munsiff is in the doldrums. Such being the case, a nebulous body, the nature of whose constitution is not known, may, if the Government so wish, be entrusted with any amount of authority in the matter of pecuniary jurisdiction. It is difficult to accept such a proposition. A distinct line will have to be drawn with regard to the pecuniary jurisdiction of the Boards.

Then it is said that the activities of the Board would come into play on good neighbourliness according to the Law Member, commonsense according to Mr. Asan and equitable considerations according to others. At any rate, those gentlemen who spoke like that, are found to agree in this, *viz*-, that the Board need not take the existing laws into consideration. That is a very serious matter. Say, a prior mortgage and a subsequent mortgage were executed by the same debtor. The creditors understood their relative rights quite well. But the Board may say "We are going to deal with you in a way not meant by you. We are bound to do something for you on equitable and common sense considerations no matter what the law is." They may treat both the mortgages on an equal footing. So if these people are at liberty to disregard the existing laws and conditions of contracts entered into between party and party, nothing more disastrous can be thought of. Then some friends suggested the need of a person with judicial training. I would add that integrity of judicial character is a more important consideration. The success of a tribunal depends on the faith it commands.

Then as somebody pointed out, very arbitrary powers have been entrusted to these Boards in some respects. Then if a person does not agree with the conclusions of the Conciliation Board, certain consequences will follow according to the provisions of this Bill. In the first instance, if he litigates in a civil court to vindicate his position and shows that the Board's position was untenable, even then, he has to suffer costs and interests. I ask, why? I litigate and establish my position. Yet this Bill has the unreasonableness to provide that I should suffer all costs and interests.

Another point is one to which attention has been drawn by Mr. Parameswara Aiyar. That is to say, if a creditor, whose presence is needed by the Board, does not appear, or does not file a statement, the Board is at liberty to write off his debt and say that the debt has been discharged. Look at the possibilities for a moment. In the first place the debt due to a person may be in excess of the pecuniary jurisdiction of these Boards. Suppose the pecuniary jurisdiction of the Board is limited to Rs. 2,000 and the creditor has to be paid Rs. 5,000. Why should he appear before the Board at all? I do not find an

LIBRARY ARCHIVES Kerala Legislative Assembly

necessity for it. The Board cannot adjudicate upon his claims. Secondly, by some chance the creditor does not happen to be here as some of the children of our leading gentlemen who are sent to England for purusing their studies. In such a case the Board will proceed to say that the debt if any due to them is discharged.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is there no provision to reopen it?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): There is no time-limit fixed for it.

Anyhow the fiat would go from the Board that the debt is at an end. The provision is that they *may* revive the case. When it is put down as 'may', the matter is one of tender mercy.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Why not change the expression to "shall"?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): Why not leave the man out on the ground of absence of jurisdiction.?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Then how is the settlement to be arrived at?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): On so many points, the Conciliation Board cannot function. What are the Boards going to do with respect to debts due to Government or to co-operative societies? Agreement of parties is the gist of action of the Board. If a man does not appear before it, where is the agreement? Where is the justification to write off a debt due to him? In such a case, nothing more iniquitous can be thought of. Therefore I say the powers of the Board, as conceived in the Bill, are very very arbitrary. With regard to *ex parte* decrees, the Civil Procedure Code says that the court on being satisfied that the defendant had justifiable cause for not appearing before the court, shall set aside the *ex parte* decree. But here the case is not like that.

Attempts are made to foreclose usufructuary mortgage. There is no provision for it in the Transfer of Property Act.

There are other minor matters in the Bill which I do not want to deal with one by one. I really sympathise with the position of the agriculturists. Relief measures to the agriculturists are necessary. But, according to me, the whole measure requires very careful scrutiny in the Select Committee. Nothing can be gained by hurrying on with the measure as the Law Member seems to want.

DEPUTY PRESIDENT: It is now 4-15. I find there are more than a dozen members who desire to speak. Personally I have no objection to sit here for a longer time. But that is a matter which the House has to decide. Alternatively I may suggest that, if the House will sympathetically view my interpretation with regard to the time-limit, then I may find it possible to give a chance to a large number of members. Does the House want the time to be extended by 15 or 20 minutes more? Anyhow I shall make a combined application of the two rules.



LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. THANU PILLAI (*Trivandrum-Rural*): Sir, I would not take much time. I want merely to make my position clear as to why I do not oppose the Bill going to a Select Committee. In regard to the provisions relating to Conciliation Boards, we are invited to take a leap in the dark. I find it difficult to make up my mind one way or the other. The provisions regarding the reduction of the rate of interest, arrest and detention of debtors are provisions which, with suitable modifications, would surely benefit the agriculturists.

But my difficulty is in regard to the provision relating to Conciliation Boards. As I said, we are taking a leap in the dark. Nobody knows what the result of the working of the Conciliation Boards will be. Even the Law Member is not in a position to assure us that the Boards will work well. I do not agree with the Law Member when he says that the creditors do not know about the assets and the economic condition of their debtors and that is why creditors insist on the payment of amounts due to them in full. The creditors know exactly where the debtors stand. Personally I have grave doubts as to how far these Conciliation Boards will work successfully. The proposal is at best only an attempt to see whether some good will come out of the Conciliation Boards proposed.

I have already expressed my view that Boards composed of non-officials will not prove successful and that each Conciliation Board should consist of a single paid officer. When I vote for this Bill going to the Select Committee, I do not say, as Mr. Parameswara Aiyar seems to do, that thirty or thirty five officers should be appointed all at once. Government ought to proceed as cautiously as possible. I would suggest that, to start with, conciliation officers may be appointed in a few centres. We may try them for a few months and see how the creditors and debtors come together and how far they are able to conciliate the debts. If it is seen that conciliation succeeds, then Boards may be set up in other centres as well. If, on the contrary, we begin by setting up these Boards in every part of the State all at once, I am afraid it may lead to unnecessary waste of money and time. A large number of suits will be withdrawn from the courts and their subject-matter will be placed before the Conciliation Boards. The detors will thereby gain time. It may ultimately be found that these Boards do not succeed in conciliating many debts. In that case the time and the money spent will be wasted.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): May I know how much time will be required by the Boards to conciliate these debts?

MR. A. THANU PILLAI (*Trivandrum-Rural*): I cannot say that. If a good number of debts are conciliated and if an impression is created in the minds of the people in favour of the Boards, there will be a rush to these Boards.

In regard to the Conciliation Boards, I do not believe that a sufficient number of non-officials having the necessary character, capacity and leisure will be available to attend to this work. It is safer to entrust this work to officers of Government, because, if an official

LIBRARY ARCHIVES Kerala Legislative Assembly

misconducts himself, he will be liable to be punished. But if it is non-officials that are invested with this power, there will, I am afraid, be grater chance of misconduct and consequent failure of the Boards. In any case, men of character and capacity should be selected to do the work of conciliation. It must be remembered that the nature of the work is such that it cannot be subjected to effective scrutiny and control and its success or failure depends almost entirely on the kind of persons entrusted with it. There are complaints about the appointment of judiclal officers even in the highest grades. Government must take the greatest care that the men entrusted with this work must be men of the highest character and capacity irrespective of communal or other similar considerations. Really efficient men should be appointed. With very competent men it may succeed to some extent.

With these words, I support the principle of the Bill in the hope that all the necessary alterations may by made in the Select Committee.

MR. P. C. KURIYAN (*Kottayam I*): This morning I tried to ascertain from the Law Member whether the State Land Mortgage Bank will advance any amount of money if the creditors and debtors come to settlements. But I am sorry I was not able to understand whether the Law Member meant that with the help of the Land Mortgage Bank the demand of all conciliation cases could be met. If that is possible, I am sure, debt relief would be very easy because most of the creditors in my constituency assured me that they are not going to be like Shylock. They are prepared to forego a portion of the debt due to them. So also the debtors are willing to clear their debts, provided the necessary means are offered to them. So, if Government or the Land Mortgage Bank makes this offer, it will be a great blessing to the State.

Coming to the Conciliation Boards, I think the provisions for the constitution of Conciliation Boards in the Bill are the best; and as a non-official and as a member of this House, I object to the suggestion that there will not be proper non-officials to serve on the Boards. Sir, I think this House which has supplied able lawyers and High Court Judges in the past is able to do so even to-day.

MR. A. THANU PILLAI (*Trivandrum-Rural*): I told, "men with capacity, time and leisure".

DEPUTY PRESIDENT: I was listening closely to Mr. Thanu Pillai. He did not make any aspersion on anybody.

MR. A. THANU PILLAI (*Trivandrum-Rural*): I would be the last man to do it.

MR. P. C. KURIYAN (*Kottayam I*): Sir, I refer to this House because this House is constituted of the best non-official element in Travancore. There are 43 clear-headed men among whom there are people who are eligible even to be recruited to the High Court direct. If such non-official members can be had in this country some five or six years back, I believe such men are available even to-day to fill in responsible places.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. P. C. Kuriyan.]

Then my friend Mr. Asan was referring to the jury system and all that; and I am surprised how he could omit the non-official elements and insist upon a judicial officer being appointed to the Board. As a compromise I would suggest one official and two non-official members on the Board. The courts, as they are to-day, are not capable of giving relief because the atmosphere is such. It is on account of these courts and the justice that is now administered through these courts that this state of affairs has arisen.

MR. M. SIVATANU PILLAI (*Tovala*): May I know whether this House itself voted down the proposal for the creation of Boards when the Debt Redemption Committee Report was discussed?

DEPUTY PRESIDENT: That does not preclude him from expressing his opinion now.

MR. P. C. KURIYAN (*Kottayam I*): This House voted it down, but this House is only part of a whole and the other part voted for the proposal.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): On a point of order, Sir. How is that point relevant here?

DEPUTY PRESIDENT: I do not think it is relevant. But before I heard him he had finished. What the other House did, does not concern us now.

MR. P. C. KURIYAN (*Kottayam I*): So Government will take care to appoint one judicial officer and two respectable non-officials of standing in the locality to assist him because the character and influence of those gentlemen will alone serve proper conciliation. A judicial officer by himself is not capable of much conciliation of the debtor and creditor. We cannot expect him to come down to the plains and do the work of conciliation which only respectable non-official gentlemen can do. An officer was an officer and is an officer and will be an officer all time. I can assure the House that such non-officials are available in the State; and in the interests of all it is better to appoint them.

MR. M. SIVATANU PILLAI (*Tovala*): In that case, will the member allow some payment to be made to them by way of allowances?

DEPUTY PRESIDENT: The member has sat down.

MR. R. SIVARAMAN NAIR (*Tiruvalla II*): Sir, almost all the points have been spoken upon by several members. What I want to say is only about the amendments proposed to the Civil Procedure Code. What ought to come as an amendment to the Civil Procedure Code Regulation is added on to this Bill.

Section 44 of the Civil Procedure Code deals with the power of the court to enforce execution of decree, that is, by attachment, by sale, by appointment of receiver and so forth. It is proposed to add this amendment as Section 44 (*a*) by which the execution court is given the power of giving the mortgagee the right of foreclosure. I am afraid Sir, whether that can be added on to the Civil Procedure Code at all.

LIBRARY ARCHIVES Kerala Legislative Assembly

The Civil Procedure Code is intended for the procedure to be followed in civil courts and the right of foreclosure is a substantive right. In British India, that right was given by the Transfer of Property Act. I am of opinion that such a substantive right cannot be appended to the Civil Procedure Code.

**DEPUTY PRESIDENT**: The existing Civil Procedure Code makes provision for interest. It is a substantive right and not a matter of procedure.

**MR. R. SIVARAMAN NAIR** (*Tiruvalla II*): If that was a mistake, it need not be repeated.

**MR. PACODE A. NARAYANA PILLAI** (*Vilavankod*): May I know whether that is substantive law or procedure law?

**DEPUTY PRESIDENT**: On that you may have your own inference.

**MR. R. SIVARAMAN NAIR** (*Tiruvalla II*): The right of foreclosure is appended to the Bill as a procedure law. But actually foreclosure comes under substantive law. In British India this right is given to the mortgagee by the Transfer of Property Act. And in British India there were several conflicting decisions about minor points and a new Order, *i. e.*, Order 34, was introduced in 1908. Order 34 does not give the right of foreclosure. It gives only power to the court to enforce the right of foreclosure. Rule (1) of that Order relates to the parties to be had in the suit and rule (2) gives what are to be the contents of the preliminary decree. Rule (3) gives what are to be the contents of the final decree. The British Indian Civil Procedure Code does not give the right of foreclosure. So I think, technically and legally, that provision cannot be appended to the Civil Procedure Code as it is. No doubt the learned Law Member has put it in as a matter of procedure but I think it is not correct. Again, Sir, in British India that right is fettered and there are several limitations. But here there is no provision as to passing of preliminary decrees; there is no provision as to what are to be the contents of a preliminary decree and a final decree. Without making provisions for any such decrees, it is really unjust to put in such a provision here as to the mode of execution. Even if it be conceded that this can be introduced in our Civil Procedure Code, my submission is that the Law Member must bring a separate Bill for the amendment of the Civil Procedure Code instead of tacking on these provisions to the present Bill.

Again, Sir, if the right of foreclosure comes into operation, it would cause great hardship, so far as the mortgagor is concerned. In Mysore, there was the right of foreclosure even before; but in the relief Bill there, that right has been taken away. There even if a decree for foreclosure has been passed, the mortgagor is given the right to pay up in instalments. But in the present Bill before us there is no such right. In the Central Provinces, the right of foreclosure is not allowed. In the United Provinces, special concessions are given to the mortgagor to redeem the mortgages. Without introducing any such provisions here in our Bill, it is really unjust to the mortgagor to put in such a provision. To me it appears to be technically and legally wrong.

LIBRARY ARCHIVES Kerala Legislative Assembly

[R. Sivaraman Nair.]

Clause 48 A proposes another amendment to the Civil Procedure Code. Part (1) of that clause deals with issue of warrants in execution so far as transactions in future are concerned and part (2) refers to transctions before the commencement of this Regulation.

As one of the honourable members remarked, I do not see the reason why an agriculturist should be differentiated from another man who conducts some other business and lives by that business, so far as execution of decrees is concerned. I believe this is not going to help the debtor in any way because in future no one is going to pay the debtor except when he hypothecates his properties. No personal credit will be given ; which creditor is going to advance money when he is sure that the debtor cannot be arrested ? Almost all the agriculturists are sufficiently burdened with debts. Which creditor is going to advance money to them ? I find that, in the case of a debtor, be he an agriculturist or a vakil or a shoe-maker, if the court is satisfied that he is not able to pay his debts or is poor enough not to pay his debts, the court can give sufficient relief under Order 21, Rule 30.

MR. A. EASWARA PILLAI (*Kalkulam II*): Sir, I wish to make a few observations on this Bill. While introducing this Bill. the learned Law Member was explaining to us how the principle of this Bill is good and acceptable without prejudice to the creditor as well as the debtor, who are at loggerheads. Sir, it is expected that, if a reasonable creditor and a willing debtor think together for the fair settlement of affairs between them, then the provisions of this Bill will work profitably. Agriculturists form the bulk of the population in Travancore ; and if some substantial relief is not given to the major portion of the population of the State, surely the agriculturists will be sinking or even drowned in debts. I wish that the Government should not play hide and seek with the debtors or creditors. They should come forward readily to help the suffering agriculturists. As relief is sought through the Conciliation Board, the members of the Board should be powerful personalities to set right their differences. The Land Mortgage Bank which is intended to relieve the indebtedness of the agriculturists through Conciliation Boards should further reduce its rate of interest. Since the debt of the agriculturist increased from 1105, retrospective effect must be given from that period and provision made for that purpose in this Bill. I do not see why some of the debts of the agriculturists should be excluded, especially debts to the co-operative societies which, in my opinion, should also be included within the purview of this Bill. With these observations, I support the prinicple underlying this Bill.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): Sir, I support the principle of the Bill. Government have reserved the power regarding the fixing of the pecuniary jurisdiction of the Board to the rule-making power of the Government provided for in the Bill.

LIBRARY ARCHIVES Kerala Legislative Assembly

That smells rather bad. I believe the Government think of differentiating certain grades of debtors and they have excluded certain kinds of debts from the jurisdiction of these Boards. I do not see any reason why that should be so. All grades of debtors, whether their debts be 2 lakhs or 5 lakhs or 2 rupees, should be brought under the jurisdiction of the Conciliation Boards.

Clause 15 (1) (*a*) provides that the Board may order that the debtor must pay a certain amount forthwith. That, I submit will be a great hardship on the debtor, in these days as he is not able to raise money immediately. A certain period should be fixed within which he should be asked to pay the first instalment.

There is another provision in the Bill which says that, if even one of the creditors does not agree to submit to the jurisdiction of the Board, the application of the other creditors also should be rejected. I cannot understand why that should be done. The Board must be empowered to come to a conclusion which will bind all the parties concerned.

There is no provision in the Bill with respect to past interest. Unless a substantial reduction is made in that, the debtor will get no real relief.

Clause 38 is an addition to the Civil Procedure Code. That has been explained by Mr. Sivaraman Nair and I merely want to state that that provision should be taken away from this Bill. It is a dangerous provision, so far as the land-owning classes are concerned. It affects their one vested right to redeem their property within 12 years from the date of decree. I do not see at all why they should be deprived of that right of theirs, especially now when they are not able to raise money.

There is also another addition proposed to be made to the Civil Procedure Code, under which one class of debtors is sought to be differentiated from another. The freedom from arrest for debt is sought to be given to only one class of debtors. That is entirely unfair. Either the provision for arrest must be retained as it is, or removed completely. I do not see any reason why we should discriminate between the various classes of debtors.

With these words, I support the principle of the Bill.

**MR. PACODE A. NARAYANA PILLAI** (*Vilavankod*). Sir, I wish to make my position clear in regard to the Bill now before us. I am not one of those who are very enthusiastic about this and say that this is the last word in the matter of affording relief to the agriculturist; nor am I one suffering from that spirit of defeatism, the spirit of the alarmist who frightens us by saying that we are making a leap in the dark. Sir, we have to take a level-headed view in this matter and consider the broad principle underlying this Bill.

**MR. A. THANU PILLAI** (*Trivandrum—Rural*): Does the member think that the creditor and the debtor will ever come to an agreement when the provisions of this Bill are worked?

**MR. PACODE A. NARAYANA PILLAI** (*Vilavankod*): We have to try and see.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. A. THANU PILLAI (*Trivandrum-Rural*): That is the leap in the dark.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): In so far as the Bill recognises the necessity to afford relief to the agriculturist, in so far as it has been found that special provisions are necessary for that purpose, I think it is but right that we support the principle of the Bill. But it is an entirely different matter whether the present provisions in the Bill are adequate or suitable for the circumstances. My own view is that the Government are adopting a kind of non-committal attitude in this matter. I cannot certainly appreciate that attitude on their part. It was rather startling when the honourable the Law Member told us that, in all well-ordered societies, the sanctity of contractual obligations will be respected and that therefore the legislature should not interfere with such obligations. Sir, such an observation could be made in a Court of Law, but not on the floor of this House. (*Hear, hear*).

DEPUTY PRESIDENT: The Law Member did not say that. He certainly conceded expediency. All that he said was that the House should bear in mind the sanctity of contractual obligations.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Throughout this Bill, Sir, that mentality is apparent. I see the hand of the 'doubting Thomas' in every provision of the Bill. The Law Member himself said that the Bill does not provide for any compulsion whatsoever. Sir, there is no law which does not involve the element of compulsion to some extent or other. Any law which tries to avoid compulsion is bound to be a failure. That is why the provisions relating to Conciliation Boards are so innocuous and innocent. I am afraid nothing will come out of them. We have therefore to implement the measure with effective provisions. The Boards to be constituted have to be armed with sufficient powers, supported with sanctions from behind.

The most important point in this measure is one of finance. Who is going to be the financing agency? Let us assume that the parties come to an agreement and that the creditor agrees to accept the amount of the award of the Board. How is the debtor going to pay off even the conciliated amount? The whole scheme depends on immediate cash payment in settlement of the creditor's claim. No doubt, if cash is forthcoming, the creditor will hug it he will embrace it. But, where is the money to come from? Where is the provision for that? Therein lies the weakness of the measure. Unless this House wants this measure to be a legislative camouflage ——

MR. A. THANU PILLAI (*Trivandrum—Rural*): Is not a legislative camouflage worse than a leap in the dark?

MR. PACODE A NARAYANA PILLAI (*Vilavankod*): There is this difference between the two. The result of a leap in the dark cannot be seen at all, whereas the result of a camouflage, be it good or bad, can be seen.

DEPUTY PRESIDENT: I am sure that was intended only to make the discussion a bit more lively.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Yes, Sir. Unless suitable additions and amendments are made, this measure will be a failure.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I shall not take up the time of the House by attempting to wind up the debate. So far as I have been able to gather, the Bill has received the approval of this House to such an extent at least as it may profitably be referred to a Select Committee, which I propose to do if the general principle of the Bill is accepted by the House.

The question that the principle of the Bill be accepted by the House was then put to vote and carried.

The Secretary then read the title of the Bill.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I beg to move that the Bill be referred to a Select Committee of the following gentlemen:

Messrs. P. K. Narayana Pillai
K. C. Abraham
A. S. Damodaran Asan
K. Kunjukrishna Pillai
P. Chidambaram Pillai
S. Chattanatha Karayalar
T. P. Velayudhan Pillai
A. Thanu Pillai
M. Mahomed Haneef
Pacode A. Narayana Pillai
N. E. Varughese
K. C. Karunakaran
R. Raman Pillai
Pottayil S. Krishna Panickar
K. Padmanabhan
T. K. Alexander
R. Sambasiva Aiyar
Rao Sahib S. Parameswara Aiyar
K. George
R. Nilakanta Pillai
M. Govinda Pillai and
Sadasya Tilakan T. K. Velu Pillai.

MR. C. KUMARA DAS (*Industrial Chemist in charge*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I move that the Committee be asked to report within three months. My idea of course is that the Committee should commence its sitting even on Tuesday or Wednesday and finish the work forthwith.

The motion was put to vote and carried.

DEPUTY PRSIDENT: The Committee will report within three months.



LIBRARY ARCHIVES Kerala Legislative Assembly